

Hernandez v Jones
15 SOEB GP 106

Candidate: Arthur J Jones

Office: 3rd Congress

Party: Republican

Objector: Ramiro Hernandez

Attorney For Objector: John Fogarty

Attorney For Candidate: Pro Se

Number of Signatures Required: 548

Number of Signatures Submitted: 878

Number of Signatures Objected to: 401

Basis of Objection: The Nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signature Not Genuine", "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," and "Signer Signed Petition Twice." In addition, Objector alleges that every sheet circulated by the Candidate should be invalidated because the Candidate, on the last day to file petitions, signed and had notarized 2 photocopies of petition page 46 and one copy of petition page 47, numbered them as pages 51, 52 and 53, and filed the photocopies as if they were originals, attempting to double and triple count signatures.

Dispositive Motions: None

Binder Check Necessary: Yes

Hearing Officer: Scott Erdman

Hearing Officer Findings and Recommendations: A records examination commenced and was completed on December 21, 2015. The examiners ruled on objections to 401 signatures. 222 objections were sustained, leaving a total of 656 signatures considered to be valid, which is 108 signatures more than the required 548 minimum number of signatures. No Rule 9 Motions were filed by either party, but the Objector indicated his intent to move forward with his remaining allegations of flagrant disregard of the Election Code in the Candidate's circulation of his nominating petitions.

An evidentiary hearing was held on January 7, 2016. The Candidate was sworn and answered questions from the Objector's attorney and the Hearing Officer, and the Candidate's original nominating petition sheets were entered into the record. The testimony showed that the Candidate had originally planned to run for Senate and subsequently (at the end of October or the beginning of November) abandoned that race in favor of seeking Congressional office. The Hearing Officer found that numerous of the Candidate's petition sheets were notarized on September 29, 2015, a full month before the Candidate stated he made the decision to abandon the Senate race and seek Congressional office. The Candidate admitted under oath that he had cut out signatures from his Senate petition and taped them on pages 46 and 47 of his Congressional petitions, and in light of this testimony the Hearing Officer concludes and recommends that every sheet purportedly circulated by the Candidate be ruled invalid. The Hearing Officer found clear and convincing evidence that sheets 1 through 45 and 48, 49 and 50 were circulated and placed before the signers of each sheet while bearing the heading indicating that the Candidate sought nomination to the United States Senate; accordingly, the Hearing Officer recommends that these sheets be ruled invalid regardless of who circulated them. Finally, the Hearing Officer found that sheets 51, 52 and 53 are photocopies of sheets previously included in the nominating petition, and recommends that they be ruled invalid.

Based on the results of the evidentiary hearing, the Hearing Officer finds that not a single petition sheet remains valid, and recommends that the Board find the Candidate has no valid signatures for an office which requires 548. Accordingly, the Hearing Officer recommends that (1) the objection be sustained, and (2) the Candidate's name not be certified to the ballot as a Republican Party candidate for the office of Representative in Congress for the 3rd Congressional District

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation.

BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
THE NOMINATION PAPERS OF REPUBLICAN PARTY PRIMARY CANDIDATES FOR
THE OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE 3RD CONGRESSIONAL
DISTRICT, ILLINOIS TO BE ELECTED AT THE MARCH 15, 2016 ELECTION

Ramiro Hernandez,)	
)	
Petitioner-Objector,	)	No. 15 SOEB GP 106
)	
v.)	
)	
Arthur J. Jones,)	
)	
Respondent-Candidate.)	

HEARING OFFICER'S REPORT AND RECOMMENDATION

This matter coming before the State Board of Elections as the duly qualified Electoral Board and before the undersigned Hearing Officer pursuant to Appointment and Notice issued previously, the Hearing Officer makes the following Report and Recommendation:

1. The Candidate timely filed with the State Board of Elections Nomination Papers to qualify as a candidate for the office of Representative in Congress for the 3rd Congressional District in the State of Illinois.
2. The Objector's Verified Petition to the Nomination Papers of the Candidate was timely filed on December 7, 2015. In the Petition, the Objector raised objections including that the nominating papers contained insufficient signatures for the reasons set forth in the Verified Objector's Petition and the Appendix-Recapitulation attached to the Objector's Petition.
3. An initial hearing and case management conference on this matter was held on December 14, 2015. The Candidate Arthur J. Jones was present. The Objector Ramiro Hernandez was present through counsel, John G. Fogarty, Jr.
4. An Initial Case Management Order was issued by this Hearing Officer on December 14, 2015. All parties involved were notified that the records examination had been scheduled for December 21, 2015 at 9:00 a.m. in the State Board of Elections' Springfield office.
5. On December 21, 2015 the record exam was completed and all parties were notified of the results and the time period for the filing of any Rule 9 Motions began. Both the Candidate and the Objector were notified that the deadline for filing Rule 9 Motions was December 24, 2015 by 5:00 p.m.
6. No Rule 9 Motions were received by the proscribed deadline.

7. The results of the record exam showed that there were 878 signatures submitted for an office that requires 548 valid signatures. The objector's petition objected to 401 of those signatures. Of that number 222 objections were sustained leaving a total of 656 valid signatures, 108 more than are required.

8. A status conference call was held on December 31, 2015 where Objector indicated his intent to move forward with the allegations contained in Paragraph 11 of the Verified Objector's Petition. An Evidentiary Hearing on those allegations was scheduled for Thursday, January 7, 2016 at 10:00 am in the State Board of Elections Chicago office. The Objector requested that the original nominating petitions be made available at that hearing and that request was granted.

9. At The Evidentiary Hearing on January 7, 2016, the candidate, Arthur J. Jones was sworn as a witness and answered questions from both the objector's attorney and this hearing officer.

10. The Candidate's Nominating Petitions were entered into the record as Group Exhibit A.

11. The Candidate stated he was concerned that he would not have enough signatures at the time of filing.

12. The Candidate stated that page 46 of the petitions was circulated by him and that he appeared before a notary to sign and have that sheet notarized.

13. The Candidate stated that page 47 of the petitions was circulated by him and that he appeared before a notary to sign and have that sheet notarized.

14. The Candidate stated that as to pages 46 and 47 of his nominating petitions that he had cut the signatures from petition sheets that he had circulated for the office of Senate and taped them onto the blank signature lines on his Congressional petition sheets.

15. The Candidate stated that he did this when he found out that "Lipinski was the only one running for Congress".

16. The Candidate stated that he found out Lipinski was running unopposed at a "meeting downstate with Mr. Martyr (sp)" where "candidates were gathering to exchange petitions and gather signatures".

17. The Candidate stated that this meeting happened "two to three weeks before the filing deadline." When asked again, he stated that the meeting occurred "about a month before the filing deadline".

18. The Candidate stated that the earliest his decision to switch from circulating Senate petitions to Congressional petitions was the end of October or the beginning of November.

19. The Hearing Officer questioned the Candidate as to why, on sheets 1 through 50 of his petitions he had taped his "Name", "Address-Zip Code", "Office", "District" and "Party" information into the boxes provided for that information at the top of his petition sheets.

20. The Candidate stated that he had already "paid good money to have the petitions printed" for the Senate race and did not want to pay twice. When asked if it would have been easier to tape the information over a blank Senate petition sheet and copy that sheet 50 times he replied that it would not.

21. When questioned as to what was under the taped on information, the Candidate first responded that the spaces beneath were blank. When asked again, he stated that the information would pertain to the Senate office.

22. The Candidate was asked why he taped over *all* of the information in the header of his petitions when the only information that changed was the office sought. The Candidate stated that he taped over all of the information so that there was consistency across the header.

23. The Candidate's petition sheets numbered 1, 8, 11, 19, 20, 21, 27, 34, 40, 41, 42, 45, 46, 47, and 48, were all notarized on September 29, 2016, a full month before he stated that he made the decision to seek the congressional office and abandon the senate race.

24. The Candidate admitted under oath that he cut out signatures from his Senate petitions and taped them on pages 46 and 47 of his Congressional petitions. This alone is enough to find that the allegations in Objector's paragraph 11 are true and that the Candidate showed such a flagrant disregard for the Election Code that every sheet purportedly circulated by him should be ruled invalid.

25. The examination of sheets 1 through 45 and 48, 49 and 50 also show a flagrant disregard for the Election code in that there was clear and convincing evidence they were circulated and placed before the signers of each sheet while bearing the heading which indicated that the Candidate sought nomination to the office of United States Senate. These sheets should be ruled invalid as well regardless of who circulated them.

26. The Hearing Officer finds that sheets 51, 52 and 53 are photocopies of sheets previously included in the nominating petition and are therefore ruled invalid.

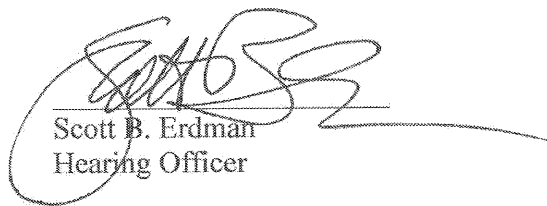
27. It is impossible for the Hearing Officer to turn a blind eye to the clear evidence presented in the form of the nominating petitions and the Candidate's own testimony.

28. The Hearing Officer finds that the allegations made in Objector's paragraph 11 are true. Further, the Hearing Officer finds that there is not a single petition sheet from the

Candidate's nominating petition that survives as valid after the testimony and evidence presented at the Evidentiary Hearing.

29. It is the finding of the Hearing Officer that the Candidate has no remaining valid signatures for an office that requires 548. It is therefore the recommendation of the Hearing Officer that the objections of Ramiro Hernandez to the nominating petitions of Arthur J. Jones, be sustained.

Dated: January 18, 2016



Scott B. Erdman
Hearing Officer

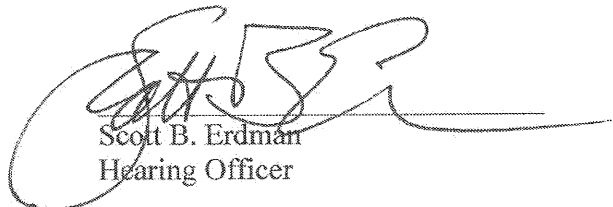
BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD
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NOTICE

A copy of the Hearing Officer's Findings and Recommendation was served upon the parties on January 18, 2016. Exceptions to the Report and Recommendation should be filed with the State Board of Elections within two (2) business days. This matter will be presented to the State Board of Elections as the duly constituted State Officers Electoral Board at a hearing on January 20, 2016 at 10:30 a.m. at the James R. Thompson Center, 100 W. Randolph St., Chicago Illinois, 60601.

Date: January 18, 2016


Scott B. Erdman
Hearing Officer

Jan. 7, 2016

Mr. Erdman and Members of the Illinois State
Board of Elections:

I am Arthur J. Jones, the sole Republican candidate running for Congress in the 3rd Congressional District of Illinois.

I have run for this very same office numerous times. My last attempt at this office was in 2012. My most successful run was in 2010 where I received 33% of the votes cast in the Republican primary.

Each time I have run for this office, the Republican Party has always seen to it that I would have at least one primary opponent to eliminate me in the primary rather than have me face the incumbent Democrat, first Bill, then later his son, the current congressman, Dan Lipinski.

In 2006, the Republican Party attempted to knock me off the ballot, with a similar collection of

fabrications about the contents of my nomination papers. I had to endure a binder check and later file a RULE 8 MOTION, requiring me to obtain 176 signed and notarized affidavits from those whose signatures were alledged to be fraudulent by the the objector James Nalepa and his two lawyers, Mr. Anthony Peraica and Mr. Joseph Morris.

The Cook County Board of Elections ruled in that case, unanimously in my favor and placed my name on the ballot. I cost Mr. Nalepa, the candidate preferred by the Republican Party, the election. Another candidate in the primary won and promptly lost to the incumbent Democrat in the fall general election.

I mention this because I want you and the members of the state elections board to know that I have been thru this process before, and there

is nothing I would ever do that I know would bring on another attack on my honesty and integrity as a candidate for public office, as I experienced in 2006.

My last two campaigns, the Republican Party did not attempt to remove me from the ballot, because they were confident I would lose in the primary to one of the other candidates. And they were right, I did lose to their preferred candidates. And their preferred candidates then got slaughtered and crushed by Congressman Lipinski in the general elections.

Thus the 3rd Congressional District has proven to be a political graveyard for anyone calling himself or herself, a Republican.

So no one this time could be found that was willing to spend the time and money necessary to take on Congressman Lipinski.

When I learned that no one was running in the 3rd Congressional District against Lipinski, I decided to run against him - and started gathering the necessary signatures.

I campaigned in areas I knew or was thought to be in the 3rd district- Stickney, Bridgeview, Worth, Chicago Ridge, Oak Lawn and North Riverside.

Due to the redrawing of the 3rd District, I was incorrect about North Riverside. I did not have an up-to-date map of the 3rd district to work with. So, I just went to where I was able to remember the communities that were in the 3rd district.

I learned North Riverside was not in the 3rd district 2 days before the filing deadline. So, I campaigned during those last 2 days, getting signatures. On the Sunday before the filing deadline, I was gathering signatures in the rain.

Due to the rain, some of those signatures, became so smudged they were unreadable. My BIC Pen did not write well on wet paper, so I bought a SCRIPTO PEN, with an jell-like ink that did write better than my BIC Pen.

I collected as many signatures as I could until it was too dark to go door-to-door. Then, I returned home, got my wife and went out to supper. When I returned, it was about 10 p.m. so I went to bed, got up at 3 or 4 a.m. to start the numbering and assembling all the pages of signatures. Then I had to prepare a cover for those nomination papers. So I went to a Walgreens Drugstore that is open all night and bought some colored constuction paper. I picked yellow for the cover. I then added the information identifying whose cover it was and the office I was running for.

I decided the last page of my nomination papers, which was page 50, would contain the signatures of myself and my wife, Patricia.

However, in assembling the pages, I found I had 3 pages left over, beyond the 50 I had intended to stop at. So I added them as pages 51, 52, and 53, not realizing these were not infact extra pages, but copies of pages 46 and 47!!

I was so tired at this hour in the morning, that I even missed page 39, where I had neither signed it as the circulator nor had it notarized.

Thus there was no fraud intended. Just simple fatigue. All the other allegations have been found to be without merit. Where I errored was in accepting the words of the people I spoke with that they were registered voters that lived in and were registered to vote at the addresses

they put down on my nomination papers. Some of those addresses turned out not to be correct, though I'm sure it was not a deliberate attempt to deceive me. As for signatures not signed by the proper person or forged - that is where I feel the fraud is on the other side. Mr. Fogarty has made several fraudulent claims that question my honor and character.

I submitted RULE 9 evidence in the form of 14 signed affidavits from 14 voters who he claims their signatures on my nomination papers were not their own. He produced nothing to counter that evidence. Had I more than the 2 days to collect more signed affidavits, I am confident all 94 voters whose signatures he questioned, would have signed an affidavit exposing his totally fraudulent charge against me.

Most of the signatures I obtained were from pro-Life voters that attended churches that were involved in the pro-life movement:

ST.PETER-PAUL IN NAPERVILLE

IMMACULATE CONCEPTION IN ELMHURST

ST. FABIAN IN BRIDGEVIEW

OUR LADY OF THE RIDGE IN CHICAGO RIDGE.

I greeted them after their Sunday Mass Services and informed them,I was the only pro-Life candidate of the Republican Party running in the 3rd District.

Some didn't know whether they lived in the 3rd district or not. Nor was I sure of their addresses either,since I did not have an accurate,detailed map of the redrawn 3rd District to work with.

So I let them sign the petition and it turned out some were in the 3rd District and some were now outside the 3rd District but didn't know it. And some were in the 3rd District,but had not yet registered to vote. That is not fraud,as Mr. Fogarty would have you believe.

As proof of my honor, I am an honorably discharged veteran of the Viet Nam war with several decorations - Combat Infantry Badge, Army Commendation Medal, Air Medal, and two brozne service stars for my year in Viet Nam -1969-1970.

As proof of my honesty I have been a licensed independent insurance agent since 1983 and in all that time there is not one record of complaint against me nor has there ever been any action taken against me by the Illinois State Department of Insurance for any act of dishonesty or dishonorable conduct or fraudulent acts.

Despite what Mr. Fogarty and his Republican Party bosses would have you believe, I have never deliberately violated any of the election laws in this state and I deeply resent this attempt to besmirch my good name as someone unworthy to hold public office.

P. 9

I feel so strongly about this attempt to portray me as a person lacking in honor and decency, that I am willing to submit myself to a polygraph examination on this issue of fraud. And I challenge Mr. Fogarty to take the same examination!

Let him defend his fraudulent charges against me if he can. And of course I doubt he would put himself through the same test to defend his untruthful charges against me for which he was paid to produce those baseless accusations.

In closing, I just want it on record that I am willing to submit to a lie detector exam in order to clear me of these false charges and to restore my good name and place it on the ballot for the March 15, 2016 Republican primary.

Thank You Sincerely,

Arthur J. Jones
Arthur J. Jones

DD FORM 1 JUL 68 214 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE EFFECTIVE 1 JAN 67 ☆ GPO 1969 351-112 ARMED FORCES OF THE UNITED STATES REPORT OF TRANSFER OR DISCHARGE

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR
CANDIDATES FOR THE OFFICE OF REPRESENTATIVE IN CONGRESS FOR THE
3rd CONGRESSIONAL DISTRICT IN THE STATE OF ILLINOIS**

Ramiro Hernandez,)
)
Petitioner-Objector,)
)
vs.)
)
Arthur J. Jones,)
)
Respondent-Candidate.)

VERIFIED OBJECTOR'S PETITION

Now comes Ramiro Hernandez (hereinafter referred to as the "Objector"), and states as follows:

1. Ramiro Hernandez resides at 4144 W. 59th Street, Chicago, Illinois, 60629, in the County of Cook, in the 3rd Congressional District in the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a Candidate for Nomination to the Office of Representative in Congress for the 3rd Congressional District in the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objections to the nomination papers of Arthur J. Jones ("the Nomination Papers") as a candidate for nomination to the office of Representative in Congress in the 3rd Congressional District in the State of Illinois, and file the same herewith, and state that the said nomination papers are insufficient in law and in fact for the following reasons:

ORIGINAL ON FILE AT
STATE BD OF ELECTIONS
ORIGINAL TIME STAMPED
AT 12/7/15 3:39 pm *ae*

3. Your Objector states that in the 3rd Congressional District, for the Republican nomination to the office of Representative in Congress in the 3rd Congressional District in the State of Illinois, the signatures of not fewer than 548 duly qualified, registered, and legal voters of the said 3rd Congressional District in the State of Illinois are required. In addition, said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

The Candidate Has An Insufficient Number Of Signatures To Qualify For Office

4. Your Objector states that the Candidate has filed 53 petition signature sheets containing a total of 984 signatures of allegedly duly qualified, legal, and registered voters of the 3rd Congressional District in the State of Illinois.

5. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

6. Your Objector further states that the aforesaid Nomination Papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 3rd Congressional District in the State of Illinois and their signatures are therefore invalid, as more fully set forth in the Appendix Recapitulation under Column "A" designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

7. Your Objector further states that the said Nomination Papers contain the names of numerous persons who have signed said petition but who are not, in fact, duly qualified,

registered, and legal voters at addresses that are located within the boundaries of the 3rd Congressional District in the State of Illinois as shown by the addresses they have given on the petition, as more fully set forth in the Appendix-Recapitulation under the Column "B" designated "SIGNER RESIDES OUTSIDE DISTRICT," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

8. Your Objector further states that the said Nomination Papers contain the names of numerous persons who did not sign the said Nomination Papers in their own proper persons, and that the said signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column "C" designated "SIGNATURE NOT GENUINE / NOT SIGNED BY PROPER PERSON," attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

9. Your Objector further states that said Nomination Papers contains the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation, under the Column "D" designated "SIGNED PETITION TWICE" attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

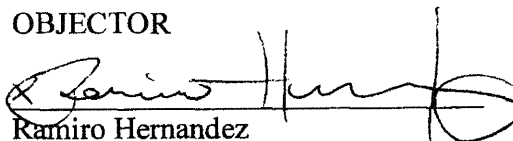
10. Your Objector states that the petition sheets circulated by the Candidate evidence such a flagrant disregard of the Election Code that every sheet purportedly circulated by the Candidate should be invalidated in accord with *Canter*, *Huskey* and *Fortas*. In particular, on the last day to file petitions, the Candidate signed and had notarized 2 photocopies of petition page 46, and one photocopy of petition page 47, numbered them as pages 51, 52 and 53, and filed these photocopies as if they were originals, attempting to double and triple count his signatures from those two pages.

11. Your Objector states that the Nomination Papers herein contested consist of various sheets purportedly containing the valid and legal signatures of 984 individuals. The individual objections cited herein with specificity reduce the number of valid signatures below the statutory minimum of 548.

WHEREFORE, your Objector prays that the purported Nomination Papers of Arthur J. Jones as a Republican candidate for Representative in Congress in the 3rd Congressional District in the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Arthur J. Jones as a Republican candidate for Representative in Congress in the 3rd Congressional District in the State of Illinois BE NOT PRINTED on the OFFICIAL REPUBLICAN PRIMARY BALLOT for the General Primary Election to be held on March 15, 2016.

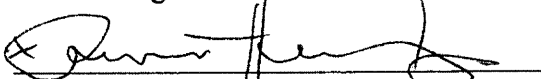
Respectfully submitted,

OBJECTOR


Ramiro Hernandez

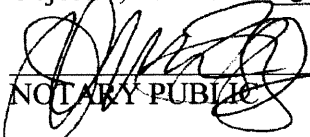
VERIFICATION

The undersigned as Objector, first being duly sworn on oath, now deposes and says that he has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true and correct.


Ramiro Hernandez, OBJECTOR

County of Cook)
) ss.
State of Illinois)

Subscribed to and Sworn before me, a Notary Public, by Ramiro Hernandez, the
Objector, on this the 6th day of December, 2015, at Chicago, Illinois.



NOTARY PUBLIC (SEAL)

My Commission expires: 5-4-19



Eck v Reick
15 SOEB GP 512

Candidate: Steven Reick

Office: State Representative, 63rd District

Party: Republican

Objector: Ronald Eck

Attorney For Objector: William Yu/James Nally

Attorney For Candidate: John Fogarty

Number of Signatures Required: 500

Number of Signatures Submitted: 742

Number of Signatures Objected to: 427

Basis of Objection: The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," "Signer Signed Petition More than Once" and "Signer Signed for Another Established Party Candidate." Additionally, Objector alleges that the petition contains sheets which are not signed by the circulator and/or were not properly witnessed by the circulator. Objector also alleges that one sheet is invalid in its entirety because it was signed by the same individual who notarized the circulator's affidavit of the same sheet.

Dispositive Motions: Candidate's Motion to Strike Paragraph 13 of the Objector's Petition

Binder Check Necessary: Yes

Hearing Officer: Phil Krasny

Hearing Officer Findings and Recommendations: A records examination commenced and was completed on December 21, 2015. The examiners ruled on objections to 427 signatures. 238 objections were sustained, leaving 504 valid signatures, which is 4 signatures more than the required minimum number of 500 signatures.

The Candidate filed a Motion to Strike Paragraph 13 of the Objector's Petition, which alleged that one petition sheet is invalid in its entirety because it contained the signatures of the same individual who notarized the circulator's affidavit of the same sheet. The Objector agreed to strike this paragraph, therefore, the Hearing Officer recommends that this objection be dismissed.

Both the Candidate and the Objector filed Rule 9 Motions. The Objector filed a Rule 9 Motion and accompanying material, which included a representation that he would be offering evidence of a handwriting expert, James Hayes, to rebut some of the findings made at the records examination. The Candidate filed a motion seeking to bar the testimony of Mr. Hayes on the basis that the Objector's disclosure merely of the identity of his purported expert, rather than the expert testimony the Objector hopes to elicit, is contrary to the requisites of Rule 9 because the Objector failed to offer any actual evidentiary material produced by Mr. Hayes, such as a report containing his opinion on any of the signatures at issue. The Objector argued that the time limits of Rule 9 prevented Mr. Hayes from submitting his exact findings, but the Rule 9 requirements were satisfied because the Objector disclosed both the identity of the expert witness as well as the signatures about which Mr. Hayes will give testimony.

The Hearing Officer took the motion under advisement but ordered that the litigants take the expert's evidence deposition and that the Objector provide the Candidate, at least 24 hours prior to the deposition, with copies of the expert's report and any materials he relied upon in rendering his opinion. The Hearing Officer also allowed, on an expedited basis, the Candidate to retain an expert to refute any of Mr. Hayes' findings.

At the Rule 9 Hearing, the Candidate successfully rehabilitated 18 signatures and the Objector presented sufficient evidence to strike 9 additional signatures; therefore, the total number of valid signatures remaining prior to consideration of Mr. Hayes' expert testimony was 513.

The evidence deposition of Mr. Hayes, a certified forensic document examiner, was then submitted into evidence. Mr. Hayes testified that when doing his comparison he was looking for sufficient similarities between the printed names on the petition and the signatures on the voter registration cards. He acknowledged that (1) when making his comparison he did not know the circumstances under which the signer signed the petition, (2) a person's signatures can evolve over time and (3) his task of comparing signatures is enhanced by having multiple writing exemplars to compare to the document at issue. Mr. Hayes opined that of the 55 printed names he compared to registration cards, 54 had insufficient similarities and therefore were not genuine.

In rebuttal, the Candidate presented 34 affidavits and the evidence deposition of Joseph Fanciulli, a questioned document examiner, who opined that there was no basis for Mr. Hayes' rejection of 54 signatures. The Objector filed a motion to bar Mr. Fanciulli's testimony, arguing that he lacked qualifications to render such opinions because Mr. Fanciulli is not accredited by the American Academy of Forensic Scientists and because he has previously been considered by a Colorado court to be a "technical expert" and not a "scientific expert." After considering Mr. Fanciulli's testimony related to his qualifications, the Hearing Officer determined that Mr. Fanciulli's experience and training afford him knowledge of signature comparison beyond that of an average citizen; therefore, the Hearing Officer recommends that the Objector's motion to bar Mr. Fanciulli's testimony be denied.

The Objector also objected to the Candidate's introduction of the 34 rebuttal affidavits that were signed by voters who averred that they did sign the petitions which Mr. Hayes had opined did not bear adequate similarities to the registration cards. The Objector argued that the submission of the affidavits was untimely and they should have been produced when the Candidate filed his original

Rule 9 material. The Hearing Officer found that the affidavits could only be obtained after the Candidate heard Mr. Haye's testimony and are proper rebuttal evidence used by Mr. Fanciulli to refute Mr. Haye's opinion on the 54 signatures; therefore, the Hearing Officer recommends that the Objector's objection to the Candidate's introduction of 34 affidavits be denied.

Mr. Fanciulli testified to the underlying principles when performing a document examination, specifically noting that an examiner must have sufficient exemplars in order to properly compare an individual's printing to cursive writing and vice versa. Accordingly, Mr. Fanciulli stated that (1) Mr. Haye had insufficient exemplars to make a valid comparison and (2) the exemplars on the 34 affidavits he reviewed were sufficient to make a valid comparison and find sufficient similarities to conclude that the signatures on the petition were similar to the affidavits.

The Hearing Officer then considered what weight should be placed on Mr. Haye's opinion to exclude 54 signatures on the basis that they did not have sufficient similarities to the voter registration records. In making his decision, the Hearing Officer was guided by the Board's Rules of Procedure, which specifically allow a signer to print, rather than sign, his or her name on a petition, and the overall principle that a candidate's petition should not be summarily disregarded. Based on those guidelines, and combined with Mr. Haye's testimony that (1) when making his comparison he did not know the circumstances under which the signer signed the petition, (2) a person's signatures can evolve over time and (3) he only had one exemplar to compare to the names on the petition, the Hearing Officer recommends that the Board not consider the opinion of Mr. Haye's in excluding 54 additional signatures.

The Hearing Officer further noted that all of the printed signatures on the petition sheets correctly identified where each voter lived and speculated as to the impossibility that 54 persons, who chose to print names on the Candidate's petition, would know where the voters reside if they were not the actual voters. Additionally, after considering the 34 affidavits submitted by the Candidate and the lack of affidavits from the remaining 24 signers averring that they did not sign the petition, the Hearing Officer is of the opinion that the Objector has not met his burden of proof as to the genuineness objection of the 54 signatures.

In summary, following the records examination and Rule 9 hearings, the Hearing Officer found that the Candidate's petition contains 513 valid signatures, which is 13 signatures more than the minimum number required for his name to appear as nominee for the office of State Representative. Accordingly, the Hearing Officer recommends that the Candidate's name be certified to the ballot as a Republican Party candidate for the office of State Representative for the 63rd Representative District.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation.

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motions and requests for issuance of subpoenas.

The Candidate filed a Motion to Strike paragraph 13 of Objector's Petition, which Objector eventually agreed to strike.

A record examination was completed on December 21, 2015 at which time it was found that the Candidate had 315 unchallenged signatures and 189 valid signatures; thereby resulting in 504 valid signatures, 4 more than required by statute.

Rule 9 Material was filed by the Candidate. The Objector filed a Rule 9 Motion and accompanying material which included, inter alia, a representation that he would be offering evidence of a handwriting expert, James Hayes, to rebut some of findings made at the records examination. The Candidate filed a motion seeking to bar the testimony of Mr. Hayes. The Objector thereafter filed a Response in opposition to the motion to bar.

A hearing was held on December 31, 2015, at SBE office in Chicago. The Objector was represented by James Nally. The Candidate was represented by John Fogarty.

ISSUES RAISED IN THE OBJECTOR'S RULE 9 MOTION TO BAR

At the December 31, 2015 hearing, the Candidate's attorney, in support of his motion to bar the testimony of James Hayes, argued that the Objector's disclosure merely of the identity of his purported expert, rather than the expert testimony the Objector hopes to elicit, is contrary to the requisites of Rule 9 of the adopted Rules of Procedure of the State Officers Electoral Board. In essence, the Candidate posits that merely indicating that Hayes will testify to refute the findings of the record examiner violates Rule 9, since the Objector failed to offer any actual evidentiary material produced by Mr. Hayes, such as a report that contains his opinion on any signature at issue in this case.

The Objector's attorney argued that the time limits of Rule 9 prevented Hayes from submitting a report regarding his exact findings. Rather, Objector argued that since his Rule 9 motion discloses both the identity of the Expert Witness James Hayes, as well as the signatures from the records examination that Mr. Hayes will give testimony about the Objector satisfied Rule 9 requirements.

Your Hearing Officer took the motion under advisement, but ordered that the litigants take the expert's evidence deposition and that the Objector provide the Candidate, at least 24 hours prior to the deposition, with copies of the expert's report and other materials he relied upon in rendering his opinion. Further, your Hearing Officer indicated that should the Candidate decide to retain an expert to refute any of James Hayes's findings, your Hearing Officer would allow it, but on an expedited basis.

CANDIDATE'S RULE 9 MOTION AND EVIDENCE

The Candidate then proceeded to present evidence outlined in his Rule 9 motion. As regards Candidate's claim that there were errors in the record examination pertaining to "Signer Not Registered At Address Shown", your hearing officer overruled 6 previously sustained objections; as regards errors in the record examination pertaining to "Signatures Not Genuine", your hearing officer overruled 8 previously sustained objections; as regard errors in the record examination pertaining to "Out Of District Signatures", your hearing officer overruled 1 previously sustained objection. Finally, as regards similar types of objections made pertaining to McHenry County signators, your hearing officer overruled 3 previously sustained objections. Accordingly, the Candidate increased his signature count by 18 resulting in 522 valid signatures, 22 more than the 500 threshold. The hearing was adjourned and reconvened on January 15, 2016.

OBJECTOR'S RULE 9 MOTION AND EVIDENCE

On January 15, 2016, Objector presented evidence in support for his Rule 9 motion seeking to overturn findings made at the record examination. Exhibit A of the motion included review of 7 objections to signatures which the examiner found to be living at the address listed. The Objector sought to have the signatures/addresses reviewed by presenting voter records obtained from the keeper of the records. Of the 7 objections 5 objections were overruled, 1 was sustained and one taken under advisement, which your Hearing Officer now suggests be sustained. The net result is 2 additional signatures which should be stricken.

JAMES HAYES

The evidence deposition of James Hayes, which was held on January 8, 2016, was submitted into evidence. James Hayes testified that he is a certified forensic document examiner. His c.v. was marked as an exhibit.

James Hayes testified that he was retained by the Objector's attorney to compare 55 printed names on several petitions to the signatures on voter registration. He testified that when doing his comparisons he was looking for sufficient similarities between the printed names on the petition and the voter registration card. He acknowledged that when making his comparison, 1) he did not know the circumstances under which the signer signed the petition and 2) that a person's signature can evolve over time. He further conceded that his task of finding similarities or dissimilarities is enhanced by having multiple writing exemplars to compare to the question document.

Mr. Hayes opined that of the 55 printed names he compared to registration cards, 54 had insufficient similarities and, therefore, in his opinion, were not genuine; i.e.; that

they were not made by the same person.

REBUTTAL EVIDENCE

In rebuttal, the Candidate presented the evidence deposition of Joseph Fanciulli, a questioned document examiner, who disagreed with Mr. Hayes and opined that there was no basis for Hayes' rejection of the signatures.

The Objector filed a motion to bar Mr. Fanciulli's opinions because, inter alia, he lacked qualifications to render opinions regarding questioned documents. Specifically, the Objector argued, inter alia, that Fanciulli was not accredited by the American Academy of Forensic Scientists and that he was found to be marginally qualified (the court considered him a "technical expert" and not a "scientific expert") in *Johnson v Samora*, a 2013 case out of the District Court of Saguache County Colorado, wherein he opined on disputed signatures on absentee ballots.

As regards, Fanciulli's qualifications, his c.v. was marked as an exhibit. He testified that he worked as a police officer from 1974-1990, where he functioned as a question document examiner for several police departments. He testified that he had extensive on the job training and had taken courses with the Secret Service and FBI. Since his retirement in 1990, he continued his work as a question document examiner. He is a member of professional organizations and has been certified as a fraud examiner by the National Association of Certified Fraud Examiners. He has taught at community college and provided training at the request of the National Association of Certified Fraud Examiners. He further testified that he has been found qualified to opine about questioned documents in over 200 cases.

"The decision whether to admit expert testimony is within the sound discretion of the trial court." *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 303 Ill. Dec. 806 (2006) (Thompson I). "The burden of establishing the qualifications of an expert witness is on the proponent of his testimony ***." *Lombardo v. Reliance Elevator Co.*, 315 Ill. App. 3d 111, 123, 733 N.E.2d 874, 248 Ill. Dec. 199 (2000) (quoting *People v. Jordan*, 103 Ill. 2d 192, 208, 469 N.E.2d 569, 82 Ill. Dec. 925 (1984)). "A person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson I*, 221 Ill. 2d at 428. "There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through practical experience, scientific study, education, training or research." *Thompson I*, 221 Ill. 2d at 428-29 (quoting *People v. Miller*, 173 Ill. 2d 167, 186, 670 N.E.2d 721, 219 Ill. Dec. 43 (1996)). An expert need not have formal academic training or specific degrees, but only "knowledge and experience beyond that of an average citizen." *Thompson I*, 221 Ill. 2d at 429. Accordingly, it is the recommendation of your Hearing Officer that the Objector's objection to Mr. Joseph Fanciulli qualifications to render an expert opinion on the question documents be denied.

The Objector also objected to the Candidate's introduction of 34 rebuttal affidavits which were signed by voters who averred that they did sign the petitions which Mr. Hayes had opined did not bear similar similarities to the voting records¹. The Objector posited that the introduction of the affidavits in rebuttal was untimely and

¹ The Objector also objected to the late filing of 12 affidavits submitted by the Candidate as support for the Hearing Officer to reconsider the ruling he had made on December 31, 2015. Your Hearing Officer recommends that the affidavits be rejected as untimely.

should have been produced when the Candidate filed his Rule 9 materials.

It is your Hearing Officer's recommendation that the Objector's objection to the Candidate's introduction of 34 affidavits be denied, since the affidavits, which could only be obtained after the Candidate heard Hayes' testimony, were used, in part, to directly refute Hayes' opinion that the signatures he examined were not genuine. Accordingly, the affidavits are proper rebuttal evidence and could be used by Fanciulli to support his opinion that Hayes' opinion regarding the 54 signatures was suspect, since Hayes failed to have sufficient exemplars to render a valid opinion².

Like Hayes, Fanciulli testified to underlying principles when performing a document examination. For example, he testified that an examiner, without sufficient exemplars, cannot compare printing to cursive writing and cursive writing to print. He explained that all persons have natural variations when printing and/or writing and that an examiner must have sufficient exemplars in order to make a proper comparison. Accordingly, Fanciulli testified that 1) Hayes had insufficient exemplars to make a valid comparison and 2) that the exemplars on the 34 affidavits he reviewed were sufficient to make a valid comparison and that, when comparing the signatures on the petition to the exemplars on the affidavit, there was sufficient similarities to conclude that the signatures on the petitions was similar to the signatures on the affidavits.

DISCUSSION

WEIGHT TO BE GIVEN TO EXPERT TESTIMONY

While your Hearing Officer finds that Hayes is a qualified forensic document

² The 34 affidavits were also used by Fanciulli to support his opinion that the printed names on the petitions did not provide an adequate basis (insufficient exemplar) to support Hayes' opinion that all 54 printed names did not contain sufficient similarities and, therefore, were not were genuine.

examiner, the salient issue is what weight should be placed on his opinion to exclude 54 signatures because they did not have sufficient similarities to the voter registration records. In deciding what weight to give to Mr. Hayes' testimony, your Hearing Officer is guided by the Electoral Board's rules which specifically allow a voter to print, rather than sign, his name on a petition, as well as the controlling principle that a candidate's petition, which includes the voice of the electorate, should not be summarily disregarded. (The Election Code is designed to protect the integrity of the electoral process and that access to a place on the ballot is a substantial right not to lightly be denied. *Welch v. Johnson* 147 Ill2d 40, 56). (A candidate's 'access to a place on the ballot is a substantial right and [is] not to be lightly denied.' *Siegel*, 385 Ill. App. 3d at 460. The burden of proof in contesting [*** 16] nomination papers lies with the objector. *Hagen v. Stone*, 277 Ill. App. 3d 388, 390, 660 NE2d 189, 213 Ill. Dec. 932 (1995). A candidate's nomination papers are deemed valid absent an objection that is in conformity with the requirements of the Election Code. See *Druck v. Illinois State Board of Elections*, 387 Ill. App. 3d 144, 899 NE2d 437, 326 Ill. Dec. 220 (2008).

Keeping those guidelines in mind, and coupled with Mr. Hayes' testimony that 1) he had no idea how any of the individuals printed their names, 2) that the writing of an individual evolves over time, and 3) that he only had one exemplar to compare to the names on the petition, it is your Hearing Officer's recommendation, that the Board not consider the opinion of Mr. Hayes in excluding 54 signatures.

In making that recommendation, your Hearing Officer not only places weight on the aforementioned acknowledgments by Mr. Hayes, but by the fact that all of the printed signatures on the petitions correctly identified where the voter lived. Indeed, it is

inconceivable that 54 persons, who chose to print their names on the Candidate's petition, would know where the voter resided, unless they were the voter. Additionally, after considering the affidavits of 34 voters who averred that they did sign the Candidate's petition, and without any affidavits from the remaining 24 signers averring that they did not sign the petition, it is your Hearing Officer's opinion that the Objector has not met his burden of proof and Hayes' opinion should be rejected.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

1) That following the December 21, 2015 record examination, the Candidate had 315 unchallenged signatures and 189 valid signatures; thereby resulting in 504 valid signatures, 4 more than required by statute.

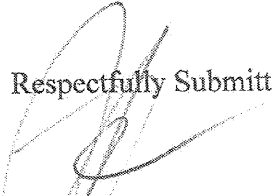
2) That following the record examination the Candidate filed a Rule 9 motion with supporting documents. Following a hearing on the motion, it is recommended that 18 of the previously sustained objections be overruled, thereby increasing the Candidate's signature count by 18, resulting in 522 valid signatures.

3) That following the record examination the Objector filed a Rule 9 motion with supporting documents. That following a hearing on the motion, it is recommended that 2 signatures on the Candidate's petition which were sustained by the record examiner be overruled thereby resulting in the removal of 2 signatures, thereby resulting in 520 signatures.

4) It is recommended that the opinion of Mr. Hayes' opinion challenging the authenticity of 54 signatures be rejected.

5) Accordingly, it is recommended that since the Candidate has submitted a sufficient number of signatures, his name should to appear as nominee on the primary ballot for

the Republican nomination for the office of State Representative for the 63rd
Representative District.



Respectfully Submitted

Philip Krasny
Hearing Officer

1/18/16

BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck)		
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)	Objector,	
)		
v.)		15 SOEB GP 512
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Reick)	Candidate	

EXCEPTIONS TO HEARING OFFICERS RECOMMENDATION

NOW COMES the Objector, by attorney, JAMES P. NALLY, P.C., and files the following exceptions to the Findings and Recommendations of the Hearing Officer and requests the opportunity to address this Electoral Board pursuant to Rule 5 of the Rules of Procedure. In support of this position it is stated as follows:

1. The Hearing Officer erred in allowing the Candidate to submit 34 affidavits as part of a rebuttal case which were not made a part of the Candidates' Rule 9 motion. Rule 9 required that the parties submit whatever documents that they would be relying upon in support of their case within the time line provided for under Rule 9. The Objectors submitted all documents, including signature clips and affidavits that they were relying upon in support of their Rule 9 motion, and also disclosed the identity an opinion of their expert witness, Board Certified Forensic Document Examiner James Hayes. The Hearing Officer allowed the Candidate the option of calling a rebuttal expert witness of their own, and they identified Joseph Fanciulli as that rebuttal witness. However in addition to

identifying this witness, the Candidate generated 34 affidavits in relation to signatures that James Hayes had testified were not genuine, in his expert opinion. The rebuttal witness relied upon each and every one of these 34 affidavits in rendering his own opinion that the signatures could be genuine. It was improper to allow the rebuttal witness to review additional evidence not already in the record and upon which the Objector's expert witness was not allowed to review in rendering his opinions. Further, the rebuttal witness was not a qualified "scientific expert" as required under Illinois law, as cited in the Objector's Motion to bar the rebuttal witness. The Hearing Officer's recommendation was incorrect that the 34 affidavits "could only be obtained after the Candidate heard Hayes testimony" (Recommendation p. 7). In fact each and every one of the signatures that Hayes testified about were identified on the Exhibit B to the Objector's Rule 9 motion which was filed December 24, 2015. The Candidate was aware of each of the voter signatures that the expert witness would be testifying about, days and weeks before any of these affidavits were generated. It was improper to allow the rebuttal witness to consider these affidavits as part of his opinion. Additionally the Hearing Officer relied upon these affidavits in determining he would not reverse any of the 54 suspect signatures that had been identified by Board Certified Forensic Document Examiner James Hayes (who has worked for many years as an in-house expert for the Chicago Board of Election Commissioners in verifying the genuineness of signatures).

2. The the Hearing Officers Recommendation fails to address the seven (7) affidavits submitted by the Objector as part of the Rule 9 submission on December 24, 2015, wherein each of these voters stated under oath that they had signed the petition of a candidate of a different political party for the same office prior to signing the petition of the candidate here. Under Illinois law, a voter may only sign the nomination petition for one political party in a given election cycle, and any signatures of that voter that were signed after their initial signature for a candidate of a different political party are invalid. The Hearing Officer failed to rule on the seven affidavits, and further failed to find them to be un rebutted evidence that the seven signatures identified must be stricken from the Candidate's petitions. The failure to acknowledge the seven affidavits, while allowing the Candidate to submit 34 untimely affidavits, was prejudicial and contrary to the rules.

WHEREFORE the Objector respectfully requests that he be allowed to address the Electoral Board in opposition to the Findings in Recommendations of the Hearing Officer, and that the relief sought in the Objectors Petition be granted, and such other relief as this Electoral Board deems appropriate.

Respectfully submitted,




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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing Document was served upon John Fogarty Attorney for Candidate, Hearing Officer Philip Krasny, and the Electoral Board (through legal counsel Ken Menzel) by email before the hour of 5 PM on Jan 18, 2016.



James P. Nally, P.C.

BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

RONALD ECK

Objector,

Vs.

STEVEN REICK

Candidate.

No. 2015-S0EB 512

ADDENDUM TO FINDINGS AND RECOMMENDATIONS

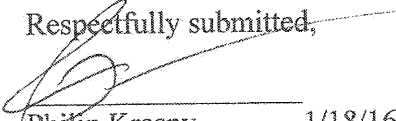
The Objector has filed an "Exception to the Hearing Officer's Recommendation" wherein he correctly points out that the hearing officers' Findings and Recommendation "did not include reference to the 7 affidavits submitted by the Objector as part of the Rule 9 submission on December 24, 2015, wherein each of these voters stated under oath that they had signed the petition of a candidate of a different political party for the same office prior to signing the petition of the candidate here".

Further, the Objector correctly points out that "under Illinois law, a voter may only sign the nomination petition for one political party in a given election cycle, and any signatures of that voter that were signed after their initial signature for a candidate of a different political party are invalid".

Therefore, your Hearing Officer is filing this addendum to his 1/18/16 report to recommend that the 7 affidavits produced by the Objector should result in the seven signatures identified to be stricken from the Candidate's petitions. Therefore, the total number of valid signatures submitted by the Candidate is reduced from 520 to 513¹, 13 more than the statutory minimum of 500.

Wherefore, after deducting the additional 7 signatures, it is still your hearing officer's recommendation that the Candidate has submitted a sufficient number of signatures for his name to appear as nominee on the primary ballot for the Republican nomination for the office of State Representative for the 63rd Representative District.

Respectfully submitted,


Philip Krasny
Hearing Officer

1/18/16

¹ Specifically, following the record examination the Candidate had 504 signatures; that following the Rule 9 hearing, the Candidate produced evidence which increased the total by 18; the Objector produced evidence which resulted in 2 additional signatures being removed; that as noted herein an additional 7 signatures should have been removed from the Candidate's tally;

BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck,)	
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Petitioner-Objector,)	
)	15 SOEBGP 512
vs.)	
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Reick,)	
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Respondent-Candidate.)	

**CANDIDATE’S RESPONSE TO MOTION TO BAR FANCIULLI AS EXPERT
WITNESS**

Now comes Steven Reick (hereinafter referred to as the “Candidate”), and for his response to the Objector’s Motion to Bar Joseph Fanciulli as an Expert Witness, states as follows:

In rebuttal of the Objector’s proffered expert, the Candidate presented Joseph Fanciulli as his expert witness in this case. Mr. Fanciulli sat for his evidence deposition on January 14, 2016, testifying by telephone from Colorado. Mr. Fanciulli is an examiner of questioned documents, with over 40 years of experience in the field. (Tr. 7, line 7 – Tr. 9, line 1.)

Mr. Fanciulli is well qualified to offer expert testimony in this case. He began his career training under document examiners in police departments in the Denver area in the early 1970’s. He eventually led the document laboratory at the Lakewood, Colorado Police Department, where he worked until 1990. (Dep. Exhibit 6) Mr. Fanciulli trained with the United States Secret Service and the Federal Bureau of Investigation. (Tr. 8.) Mr. Fanciulli has also trained with the International Association for Identification, American Academy of Forensic Sciences and the Southwestern Association of Forensic Document Examiners, both as a student and instructor. (Dep. Ex. 6.) Mr. Fanciulli has published in the field, notably penning an article entitled, "The Process of Handwriting Comparison and the Taking of Handwriting Exemplars," which was

published in the October 1979 issue of the FBI LAW ENFORCEMENT BULLETIN. (Dep. Ex. 6.)

Mr. Fanciulli is a member of the International Association for Identification, serving as Regional Representative for Colorado, and as a member of the Questioned Document and Innovative Techniques Subcommittees. (Dep. Ex. 6.) Mr. Fanciulli was a charter member of the Southwestern Association of Forensic Document Examiners and served on the initial board of directors of that organization. (Dep. Ex. 6.) He is a Certified Fraud Examiner (CFE) and a member of the National Association of Certified Fraud Examiners. (Dep. Ex. 6.)

Mr. Fanciulli has operated a private practice in questioned document evaluation since 1983, and has lectured on questioned documents throughout the southwest. (Tr. 8, Dep. Ex. 6.)

Mr. Fanciulli has been admitted as an expert witness in approximately 200 court cases (state and federal) over his 40-year career, the preponderance of which dealt with the examination of handwriting and hand printing. (Tr. 10, lines 9-16.) He has offered opinions to courts in California, Florida, Nebraska, North Carolina, Montana, Pennsylvania, South Carolina, Wyoming and Federal District Court in Denver. (Dep. Ex. 6.)

The Objector asserts that Mr. Fanciulli is not qualified to offer expert testimony because he is not a certified by the American Board of Forensic Document Examiners. Respectfully, a certification by this body is not necessary for an individual to provide an expert opinion on handwriting on questioned documents. Mr. Fanciulli was, in fact, a charter member of the Southwestern Association of Forensic Document Examiners and served on the initial board of directors of that organization. (Dep. Ex. 6.) In his deposition, Mr. Fanciulli explained the reason that he is not a member of the American Board of Forensic Document Examiners:

“To be a member, you have to be certified by them, and I applied for certification in 1978 when the organization was created, I applied for a grandfather

certification, which most of us did at that time. When the organization was created, they had very specific rules about training, and one of the things that was required was that you train for two years under a document examiner that that group recognized, and because my training was with several individuals and not under one specific person in a laboratory for two years, I wasn't granted certification. I could have stopped my career and gone somewhere and worked at a laboratory for two years, but that was -- that just was not -- was not feasible at that point in my life . . .”

(Tr. 10, line 21 – Tr. 11, line 12.)

Throughout the 1970's, Mr. Fanciulli was employed by the Lakewood Colorado Police Department, and understandably could not simply jettison his career to obtain this certification. More importantly, though, even without that certification, Mr. Fanciulli has been admitted as a handwriting expert by courts throughout the United States. (Tr. 11, line 16; Tr. 20, line 4; Dep. Ex. 6.)

The Objector asserts that because a Colorado Court admitted Mr. Fanciulli as a “technical expert” rather than a “scientific expert,” he is not qualified to testify in this case. The Objector is incorrect. The Objector glosses over the fact that Mr. Fanciulli was accepted as an expert in that case (which involved the comparison of signatures on absentee ballot materials), and that his testimony was considered expert testimony. (Dep. Ex. 7.)

From there, the Objector posits – without proof – that the opinions on handwriting offered by his expert are “scientific,” and therefore cannot be countered by Mr. Fanciulli. Respectfully, in offering his opinion testimony, Mr. Hayes was wrong more often than a weatherman in Chicago, as over 60% of his opinion evidence has been refuted by signers he opined were not genuine. The issue here is not whether his, or Mr. Fanciulli's testimony is “scientific.”

Rather, it is well-settled that the decision to admit or exclude expert testimony is within the sound discretion of the trial court. *In re Commitment of Simons*, 213 Ill.2d 523; 821 N.E.2d

1184 (2004); *Thompson v. Gordon*, 221 Ill.2d 414, 851 N.E.2d 1231 (2006). A person may testify as an expert if his or her experience and qualifications afford that person knowledge that is not common to laypersons and if that testimony will aid the trier of fact in reaching its conclusions. *Thompson*, 221 Ill.2d at 428. Further, qualification of an expert is not based on any predetermined formula for how the expert would acquire specialized knowledge or experience; such may be gained through practical experience, scientific study, education, training or research. *People v. Miller*, 173 Ill.2d 167, 670 N.E.2d 721 (1996). Formal academic training or specific degrees are not required to qualify a person as an expert; practical experience in a field may serve just as well to qualify a person. *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 605 N.E.2d 493 (1992). Indeed, an expert need only have knowledge and experience beyond that of an average citizen. *Thompson*, 221 Ill.2d at 429. Expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the proffered testimony will assist the trier of fact in understanding the evidence. *Id.* The *Jones* case, relied on by the Objector in his Motion, recognizes these standards of admissibility. Given the standards set forth and followed by the Courts of Illinois, there can be no serious question that Mr. Fanciulli be admitted as an expert witness in this case, as his experience, qualifications and knowledge in the field will aid the trier of fact in this case.

The Objector next asserts that the documents relied upon by Mr. Fanciulli were inadmissible or inadequate. The Objector is incorrect again. It seems that the Objector's major complaint was that Mr. Fanciulli testified with regard to the Candidate's 34 rebuttal affidavits, whereas Mr. Hayes was not presented those affidavits. But the singular purpose of Mr. Fanciulli's testimony had nothing to do with the Candidate's rebuttal affidavits.

Rather, Mr. Fanciulli's testimony focused on the inability of Mr. Hayes to make a one-on-one comparison between two signatures and to conclude that the two were *not* made by the same writer. (Tr. 23, lines 1-19.) Said Mr. Fanciulli, "the reliance upon the single signature voter registration that we have in this case in my training, education and experience, that is an insufficient amount of known handwriting upon which to make a decision as to whether a signature on another document is genuine." (Tr. 23, lines 14-19.) Mr. Fanciulli further testified that in his experience, a hand printed signature cannot be compared with a cursive form. (Tr. 24, lines 12-23.) According to Mr. Fanciulli, the only conclusion that can be made when given the task of comparing a printed signature to a cursive one is that the signature is just as likely to be genuine as to not be genuine. (Tr. 25, lines 2-5.) The Candidate's rebuttal affidavits have nothing to do with these opinions. Further, Mr. Fanciulli conceded that he did not review the original nominating petitions, whereas Mr. Hayes had. But again, that fact has nothing to do with the validity of Mr. Fanciulli's opinions in this case.

The Objector also offers the canard that Mr. Fanciulli could not testify with certainty that the signatures on the voter registration clips, petitions, or affidavits were genuine signatures. The Objector here makes a completely irrelevant point. Mr. Fanciulli's testimony was only in response to the question of whether he could testify that the individuals who signed these documents were who they say they were. (See Tr. 61, line 23 – Tr. 68, line 3.) Of course, neither Mr. Fanciulli, nor any other individual, could possibly credibly testify that the individuals who signed the registration clips at issue in this case, actually were who they say they were. Neither Mr. Fanciulli nor Mr. Hayes could possibly have first-hand knowledge of this fact, nor is this fact relevant to the task that Mr. Hayes and Mr. Fanciulli were asked to accomplish.

Conclusion

The Objector, in his Motion to Bar Mr. Fanciulli, offers nothing but irrelevant arguments and cherry-picked (and easily refuted) case citation in the hopes of keeping this Board from relying on Mr. Fanciulli's critique of Mr. Hayes' opinions. This Board should see the Motion for what it is, deny it, and take the opinions of both proffered experts in this case on their merits.

Respectfully Submitted,

Steven Reick
Candidate

By: /s/ **John G. Fogarty, Jr.** /s/
One of his attorneys

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BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck,)	
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)	
Respondent-Candidate.)	

SUMMARY OF PROFFERED EXPERTS' OPINION TESTIMONY

The Rule 9 deadline in this case was December 24, 2015. The Objector disclosed James Hayes as his purported handwriting expert on December 24, 2015. On January 7, 2016, the Objector disclosed that Mr. Hayes would be testifying that 55 signatures on a list of 56 were not genuine. On January 8, 2016, Mr. Hayes sat for an evidence deposition, where, for the first time, Mr. Hayes provided his purported expert opinion evidence in this case. At no time prior had Mr. Hayes prepared a report containing his opinions. (Tr. 98, line 19.)

Mr. Hayes offered an opinion on 55 signatures to which an objection of “not genuine” was made. For each of these 55 signatures, Board staff overruled the “not genuine” objection, finding a reasonable match between the signature on the Candidate’s petition and the voter’s registration record. Mr. Hayes, however, concluded that for 54 of those 55 signatures, there were not sufficient similarities for him to conclude that the signers on the petition were the same as the signers on the registration records. Notably, Mr. Hayes did not ever testify that the objections to these signatures should have been sustained. Nonetheless, in Mr. Hayes’ opinion, the Board staff got it wrong on over 98% of the signatures he was given to review. However, there are a number of serious problems with Mr. Hayes’ opinions that should cause this Board to disregard them, *in toto*.

A. Mr. Hayes Could Not Say With Certainty That Any Petition Signature Was Not Genuine.

First, for any of the signatures that Mr. Hayes reviewed, he could not say with certainty that the signature on the petition *was not* genuine. For all but one of the signatures he reviewed, Mr. Hayes' ultimate opinion was that there were "insufficient similarities to indicate a likelihood that it was signed by the same writer . . ." as the registration record. (See, e.g., Tr. 24, lines 4-9.) At no time does Mr. Hayes testify that the author of the signature on the petition is *not* the same person whose registration record he compared it to.

In fact, Mr. Hayes testified that when a signature examiner compares only one signature to only one other (a one-to-one comparison), it is not possible to eliminate the possibility that the same signer signed both. (Tr. 26, line 21 – Tr. 27, line 6.) Further, for each of the signatures he reviewed, Mr. Hayes plainly admitted that he cannot eliminate the possibility that the same signer signed both the petition and the registration record. (Tr. 48, line 15 – Tr. 49, line 8; Tr. 35, line 11; Tr. 36, line 14; Tr. 40, line 11; Tr. 42, line 6.)

B. Mr. Hayes Has No Idea Under What Conditions Any Particular Signature Was Made, And Concedes That Conditions Cause Variation In Signatures.

Another reason that Mr. Hayes' cannot say with certainty that the signer of the petition is not the signer of the corresponding registration record is the issue of a writer's natural variation of signature. Mr. Hayes readily testified that there are a number of factors that cause variation in an individual's signature, such as whether the person is standing or sitting, in a hurry, signing on a clipboard, and the like. (Tr. 28, line 15 – Tr. 29, line 2.) Mr. Hayes likewise conceded that he has no independent knowledge of the circumstances under which any of the signatures he examined were made. (Tr. 29, lines 17-24.) While Mr. Hayes claims to have accounted for such

variations in his analysis, it is simply impossible to do, if he also admits that he has no idea of the circumstances of any signing.

C. It Is Not Possible To Accurately Compare A Hand Printed Petition Signature To A Cursive Signature On A Registration Record.

Even further, the great majority of the signatures that Mr. Hayes reviewed were printed on the Candidate's petition, but were written in cursive on the voter's registration record. Especially where the reviewer is making only a one-to-one comparison, where one exemplar is hand-printed and the other is in cursive, there of course will be few, if any similarities between the two specimens. Obviously in such a situation, it would not be reasonably possible for a reviewer to make a conclusion that the signers are the same *or* different. Mr. Hayes, in fact, concedes the difficulty in comparing a hand printed signature to a cursive signature, and further concedes, for numerous of the hand printed signatures he reviewed, that he does not know how each such signer actually hand prints his name. (See, e.g., Tr. 30; Tr. 62, line 21; Tr. 64, line 8; Tr. 69, line 7; Tr. 69, line 22; Tr. 70, line 16; Tr. 74, line 3; Tr. 75, line 1; Tr. 76, line 19; Tr. 81, line 5; Tr. 81, line 22; Tr. 82, line 22; Tr. 84, line 21; Tr. 88, line 22; Tr. 89, line 16; Tr. 93, line 1; Tr. 93, line 21; Tr. 94, line 14; Tr. 95, line 6; Tr. 95, line 22; Tr. 96, line 16; Tr. 97, line 16.) Mr. Hayes' opinion testimony on hand printed signatures raises the question: For each of the hand printed signatures that Mr. Hayes reviewed, how could he possibly conclude that the signature was not genuine, when he admits that he does not know how that person hand prints his or her name? The Candidate submits that he cannot.

D. Mr. Hayes Did Not Utilize The Standard Set Forth In the State Officers Electoral Board's Adopted Rules Of Procedure.

In a further indictment of Mr. Hayes' opinions in this case, Mr. Hayes admitted that he did not review the adopted Rules of Procedure of the State Officers Electoral Board before

making his opinions in this case. (Tr. 104, lines 9-14.) Had he done so, he would have seen the standard that is applied by this body to signatures to which the objection of “signature not genuine” is lodged. The Rules of Procedure require that an objection on these grounds is evaluated as follows:

A. Signer’s Signature Not Genuine

The voter’s original signature on his or her registration record shall be examined. If, in the opinion of the records examiner the signature is not genuine, the objection shall be sustained. There is no requirement that a signature be in cursive rather than printed form. Any objection solely on the ground that the signature is printed and not in cursive form or where the basis for the non-genuineness is the fact that the signature is printed, will be denied as failing to state grounds for an objection. Staff must still perform the above mentioned examination in situations where the signature is printed to determine whether there is a reasonable match.

Rules of Procedure, p. A-12.

Mr. Hayes failed to account for the fact that before this Board, there is no requirement that a signature be in cursive, rather than printed form. Mr. Hayes also failed to review any of the printed signatures to determine that, given that hand printed signatures are sufficient, there is a “reasonable match” between the petition and the registration record. Not being aware of the standard this Board has adopted for evaluating this type of objection, not one of the opinions Mr. Hayes has offered has any relevance, and cannot be used by the finder of fact in this case.

E. Thirty-Four of the Fifty-Four Signers Whose Signatures Mr. Hayes Opined Were Not Genuine Submitted Affidavits Affirming That Their Signatures Were, In Fact, Genuine.

The final, and most damning indictment of the opinions Mr. Hayes has rendered in this case is that his opinions are overwhelmingly, provably wrong. In rebuttal to Mr. Hayes’ opinion evidence wherein he has concluded that 54 petition signers’ signatures were not genuine, the Candidate submitted the affidavits of 34 of those 54 petition signers. Each of those affiants

affirm that the signature on the Candidate's petition is indeed their signature, each provides 3 samples of his or her written signature, and 3 samples of his or her hand printed signature. The fact that over half of the signers that Mr. Hayes suggested were not genuine were able to be located in a short amount of time and were willing to sign an affidavit refuting his opinion should cast a dim light on the value of his opinion as to the remaining 20 signatures.

F. Mr. Hayes' Opinion Testimony Is Insufficient To Carry The Objector's Burden Of Demonstrating That The Rulings Of Board Staff Are Incorrect.

In conclusion, Mr. Hayes' opinion evidence was insufficient to carry the Objector's burden of demonstrating that the ruling of the records examiners in this case was incorrect. For many significant reasons, Mr. Hayes' opinion testimony must simply be disregarded. Mr. Hayes could not say that the signer on the petition was not the signer of the corresponding voter registration record. He conceded that he had no idea under what circumstances any of the subject signatures were made. For the great majority of these signatures, Mr. Hayes was attempting to compare a hand printed signature to a cursive signature. Mr. Hayes failed to review this Board's rules, where the standard for evaluating a signature is clearly enumerated, therefore giving his opinions no basis upon which this Board may rely. Finally, Mr. Hayes' opinions on the majority of the signatures he reviewed was simply provably wrong, as 34 of those signers executed affidavits refuting Mr. Hayes' opinion testimony. For these reasons, Mr. Hayes' testimony must be disregarded.

G. The Candidate's Proffered Expert, Joseph Fanciulli, Is Well Qualified To Offer Expert Testimony In This Case.

In rebuttal of the Objector's proffered expert, the Candidate presented Joseph Fanciulli as his expert witness in this case. Mr. Fanciulli is an examiner of questioned documents, with over 40 years of experience in the field. (Tr. 7, line 7 – Tr. 9, line 1.) Mr. Fanciulli began his career

training under document examiners in police departments in the Denver area in the early 1970's. He eventually led the document laboratory at the Lakewood, Colorado Police Department, where he worked until 1990. (Dep. Exhibit 6) Mr. Fanciulli trained with the United States Secret Service and the Federal Bureau of Investigation. (Tr. 8.) He has operated a private practice in questioned document evaluation since 1983, and has lectured on questioned documents throughout the southwest. (Tr. 8, Dep. Ex. 6.) He is a certified fraud examiner. (Dep. Ex. 6.) Mr. Fanciulli has been admitted as an expert witness in approximately 200 court cases (state and federal) over his 40-year career, the preponderance of which dealt with the examination of handwriting and hand printing. (Tr. 10, lines 9-16.) He has offered opinions to courts in California, Florida, Nebraska, North Carolina, Montana, Pennsylvania, South Carolina, Wyoming and Federal District Court in Denver. (Dep. Ex. 6.)

H. Mr. Fanciulli Confirmed That (1) Mr. Hayes Had An Insufficient Number Of Signature Samples To Conclude That Any Reviewed Signature Was Not Genuine and (2) A Hand Printed Signature Cannot Reasonably Be Compared To A Cursive Signature.

Mr. Fanciulli reviewed the deposition transcript of Mr. Hayes. Mr. Fanciulli opined on the inability of Mr. Hayes to make a one-on-one comparison between two signatures and to conclude that the two were *not* made by the same writer. (Tr. 23, lines 1-19.) Said Mr. Fanciulli, "the reliance upon the single signature voter registration that we have in this case in my training, education and experience, that is an insufficient amount of known handwriting upon which to make a decision as to whether a signature on another document is genuine." (Tr. 23, lines 14-19.) Mr. Fanciulli further testified that in his experience, a hand printed signature cannot be compared with a cursive form. (Tr. 24, lines 12-23.) According to Mr. Fanciulli, the only conclusion that can be made when given the task of comparing a printed signature to a cursive one is that the signature is just as likely to be genuine as to not be genuine. (Tr. 25, lines 2-5.)

Of the 20 signatures that Mr. Hayes reviewed for which the Candidate did not rebut with an affidavit from the signer, sixteen (16) are hand-printed on the Candidate's nomination petitions, and four (4) are written in cursive. Those signatures, and Mr. Fanciulli's basis for refuting Mr. Hayes' conclusion, are as follows:

Basis for Fanciulli Opinion Refuting Hayes Conclusion

- | | |
|--------------------|--|
| Sheet 3, Line 14: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on the registration record, as noted as well by Hayes. A printed form and a cursive form cannot be compared. |
| Sheet 3, Line 15: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared. |
| Sheet 7, Line 15: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. |
| Sheet 14, Line 1: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared. |
| Sheet 15, Line 9: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared. |
| Sheet 15, Line 11: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared. |
| Sheet 15, Line 14: | Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as |

well by Hayes. A printed form and cursive form cannot be compared.

Sheet 17, Line 9: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

Sheet 19, Line 7: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.¹

Sheet 19, Line 8: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

Sheet 19, Line 10: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine.

Sheet 22, Line 1: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

Sheet 25, Line 8: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

Sheet 27, Line 11: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

¹ Please note that the list compiled by counsel on January 15, 2016 using Deposition Exhibit 5 contains an error. The Candidate submitted an affidavit rebutting Mr. Hayes' opinion as to Sheet 19, Line 12 (Bryson Calvin), but did not submit an affidavit for Sheet 19, Line 7 (Dan Kennett). The list should reflect an "A" next to Sheet 19, Line 12, and not next to Sheet 19, Line 7.

- Sheet 34, Line 4: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.
- Sheet 37, Line 3: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine.
- Sheet 37, Line 10: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine.
- Sheet 40, Line 15: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.
- Sheet 42, Line 13: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.
- Sheet 43, Line 9: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.

Conclusion

Given the fatal flaws in Mr. Hayes' opinions, Mr. Fanciulli's credible assertions regarding the ability of Mr. Hayes (or anyone) to make those conclusions given the limited samples to be reviewed, and the volume of affidavits rebutting Mr. Hayes' opinions, this Board should disregard the opinions offered by Mr. Hayes, or at the very least, disregard them as to any hand printed signature on which he opined.

Respectfully Submitted,

Steven Reick
Candidate

By: /s/ **John G. Fogarty, Jr.** /s/
One of his attorneys

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BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck,)	
)	
Petitioner-Objector,)	
)	15 SOEBGP 512
vs.)	
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Reick,)	
)	
Respondent-Candidate.)	

**FANCIULLI REBUTTAL OF HAYES OPINIONS ON SIGNATURES FOR WHICH
AFFIDAVITS WERE NOT SUBMITTED**

Per the Hearing Officer's request of January 15, 2016 for the 20 signatures involved in the proffered handwriting experts' review that were not rebutted by the affidavits of petition signers, the Candidate provides the following list. All of the signatures on this list were:

- (1) objected to on the basis they are not genuine; and
- (2) found by the State Board records examiners to in fact be valid; and
- (3) the Objector's proffered expert found insufficient similarity between the signatures and voter registration records to conclude they are valid; and
- (4) the Candidate's proffered expert found that it was not possible for the Objector's proffered expert to conclude that they are not valid; and
- (5) the Candidate did not provide an affidavit from those signers in rebuttal of the Objector's proffered expert's opinion.

Of the 20 signatures on this list, sixteen (16) are hand-printed on the Candidate's nomination petitions, and four (4) are written in cursive. Please note that the list compiled by counsel on January 15, 2016 using Deposition Exhibit 5 contains an error. The Candidate submitted an affidavit rebutting the Objector's proffered expert's opinion as to Sheet 19, Line 12 (Bryson Calvin), but did not submit an affidavit for Sheet 19, Line 7 (Dan Kennett). The list should reflect an "A" next to Sheet 19, Line 12, and not next to Sheet 19, Line 7.

Basis for Fanciulli Opinion Refuting Hayes Conclusion

- Sheet 3, Line 14: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on the registration record, as noted as well by Hayes. A printed form and a cursive form cannot be compared.
- Sheet 3, Line 15: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine. Signer printed on the petition, but wrote in cursive on registration record, as noted as well by Hayes. A printed form and cursive form cannot be compared.
- Sheet 7, Line 15: Insufficient amount of known handwriting upon which to make a decision as to whether the signature is genuine.
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Respectfully Submitted,

Steven Reick
Candidate

By: /s/ **John G. Fogarty, Jr.** /s/
One of his attorneys

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BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck,)	
)	
Petitioner-Objector,)	
)	15 SOEBGP 512
vs.)	
)	
Reick,)	
)	
Respondent-Candidate.)	

NOTICE OF FILING AND SERVICE

To: James Nally, by email to jpnlaw@att.net
State Board of Elections by email to kmenzel@elections.il.gov
Hearing Officer Krasny by email philipkrasny@yahoo.com

Please take notice that on January 17, 2016, prior to 12:00 Noon, the undersigned filed with the State Board of Elections by e-mail, and e-mailed to the individuals listed above, the attached pleadings consisting of (1) Summary of Proffered Experts' Opinion Testimony, (2) Candidate's Response to Bar Fanciulli as Expert Witness, and (3) Fanciulli Rebuttal of Hayes Opinions For Which Affidavits Were Not Submitted, a copy of each is attached hereto and herewith served upon you.

/s/ John G. Fogarty, Jr.
John G. Fogarty, Jr.

Proof of Service

The undersigned attorney certifies he served copies of this Notice and the attached pleading on the above persons by e-mail at the above addresses prior to 12:00 Noon on January 17, 2016.

/s/ John G. Fogarty, Jr.
John G. Fogarty, Jr.

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BEFORE THE STATE OFFICERS ELECTORAL BOARD

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RESPONSE TO MOTION TO STRIKE REBUTTAL AFFIDAVITS

Now comes Steven Reick (hereinafter referred to as the “Candidate”), and for his response to the Objector’s Motion to Strike the Candidate’s Rebuttal Affidavits, states as follows:

1. The Objector in this case disclosed the identity of a handwriting expert in his Rule 9 Motion, but failed to timely submit any actual opinion evidence from that purported expert with his Rule 9 Motion.
2. The Candidate therefore brought a Motion to Bar any opinion evidence from that purported expert that was not submitted in the Objector’s Rule 9 Motion.
3. On December 31, 2015, the Hearing Officer took the Candidate’s Motion to Bar under advisement, and asked the parties to take the evidence deposition of the Objector’s proffered expert, and allowed the Candidate to retain an expert should he wish to do so, but on an expedited basis.
4. By agreement of the parties, the Objector’s proffered expert was deposed on January 8, 2016, and the Candidate’s proffered expert on January 14, 2016.
5. On January 13, 2015, by agreement of the parties, the Candidate produced his documentary rebuttal evidence, which consists of 34 affidavits that contradict the Objector’s

purported expert's testimony, as well as several additional affidavits that rebut the rulings made by the Hearing Officer in this case at the hearing on the Candidate's Rule 9 Motion.

6. The Objector now has filed a pleading styled Motion to Strike Affidavits, wherein he takes the position that the *only* evidence that would be permissible to rebut his purported expert's opinion is the opinion of the Candidate's expert.

7. Respectfully, there has never been any order entered in this case that would (or could) limit the type of evidence that the Candidate may use for rebuttal purposes.

8. Indeed, at the hearing on the Candidate's Rule 9 Motion, the Hearing Officer in this case invited the Candidate to provide material that would rebut his rulings as to certain signatures.

9. The use of affidavits as rebuttal evidence is perfectly accepted, commonly done, and is of no surprise to any party. To the extent the Objector's purported expert's testimony is even allowed (which it should not be), the Candidate must have the ability to rebut that testimony with any manner of competent evidence, including affidavits from petition signers.

10. Accordingly, the Objector's Motion to Strike Affidavits must be denied.

Respectfully Submitted,

Steven Reick
Candidate

By: /s/ John G. Fogarty, Jr. /s/
One of his attorneys

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Respondent-Candidate.)	

NOTICE OF FILING AND SERVICE

To: James Nally, by email to jpnlaw@att.net
State Board of Elections by email to kmenzel@elections.il.gov
Hearing Officer Krasny by email philipkrasny@yahoo.com

Please take notice that on January 15, 2015, prior to 9:00 A.M., the undersigned filed with the State Board of Elections by e-mail, and e-mailed to the individuals listed above, the attached pleading, a copy of which is attached hereto and herewith served upon you.

/s/ John G. Fogarty, Jr.
John G. Fogarty, Jr.

Proof of Service

The undersigned attorney certifies he served copies of this Notice and the attached pleading on the above persons by e-mail at the above addresses prior to 5:00 p.m. on December 28, 2015.

/s/ John G. Fogarty, Jr.
John G. Fogarty, Jr.

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BEFORE THE STATE OFFICERS ELECTORAL BOARD

Eck)	
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)	Objector,
)	
v.)	15 SOEB GP 512
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Reick)	Candidate

MOTION TO STRIKE AFFIDAVITS

NOW COMES the Objector, by attorney, JAMES P. NALLY, P.C., and moves to Strike the Affidavits first served upon the Electoral Board and counsel for Objector on January 13, 2016 at 5:21 PM. In support of this Motion it is stated as follows:

1. The records examination was completed in this matter shortly before Christmas, 2015.

On December 24, 2015 at 10:53 AM the Objector Filed his Rule 9 motion along with documents, including affidavits, supporting the Rule 9 Motion. The Objector's Rule 9 motion disclosed and contained both the identity of the Scientific Expert Witness James Hayes, as well as the signatures from the records examination that Mr. Hayes would give give testimony on. Paragraph 3 of the Objectors Rule 9 Motion clearly states:

"Also included in Exhibit B are the signatures from the signer's voter registration records that the Objector intends to submit and upon which the Objector intends to rely. To rebut the findings made at the records examination, the Objector intends to call Forensic Document Examiner James Hayes to give expert testimony regarding the validity of the signatures. A

copy of Mr. Hayes Curriculum Vitae is attached hereto as Exhibit C. The Rule 9 motion identified with specificity the voters whose signatures would be the subject of the testimony by Mr. Hayes. This was in complete compliance with the provisions of Rule 9.

2. Pursuant to Rule 9 of this Electoral Board, duly adopted by this Board on December 14, 2015, at the conclusion of the records examination, each party was granted three (3) business days to file their Rule 9 Motion. All documentary evidence in support of the Rule 9 motion was required to be submitted as part of the Motion, including any affidavits which the parties intended to rely on as part of their Rule 9 presentation.

"Evidence in the form of an affidavit must be sworn to, sign, and notarized before Notary Public or other officer authorized to administer oaths in the state of Illinois." *Rule 9 of the Rules of Procedure State Board of Elections sitting as the duly constituted State Officers Electoral Board.*

3. The Rule 9 disclosure submitted by the Objector herein complied with the parameters of the Rule. It fully discloses the documents subject of witness testimony, the identity and qualifications of the witness, and specifies the signatures the witness would be testifying about on the issue of genuineness. Copies of the certified voter registration record signature clips were included as part of the Rule 9 submission of the Objector.
4. The Hearing Officer in this matter granted the Candidate the opportunity to produce a **rebuttal witness** to the scientific expert testimony of Certified Document Examiner James Hayes who had been identified in the Rule 9 motion of the Objectors. James Hayes gave his evidence deposition on January 8, 2016. On January 13, 2016, the Candidate disclosed Joseph A Fanciulli as his proffered expert witness.

5. Later on January 13, 2016, the candidate served upon the Electoral Board and counsel for the Objector copies of 46 affidavits. These affidavits were not made a part of the Rule 9 filing of the Candidate, and come some 2 1/2 weeks after the deadline for the filing of Rule 9 motions with supporting documentation.
6. Further, at the deposition of the proffered expert of the Candidate taken January 14, 2016, for the first time it was disclosed that this witness had reviewed these affidavits, and in his testimony relied upon these affidavits, in forming his opinions and testimony.
7. At the last hearing conducted by the Hearing Officer in this matter, the Candidate rested his Rule 9 presentation. The matter was continued for the presentation of the Objector's Rule 9 case, including the taking of the evidence deposition of the scientific expert witness James Hayes who had been disclosed in the Objector's Rule 9 motion. The Hearing Officer granted leave to the Candidate to present a rebuttal witness to rebut the expert testimony of James Hayes. The Hearing Officer did not extend the time for any further Rule 9 filings by the Candidate, including documents in support of the Candidate's case, nor did the Hearing Officer grant leave to the Candidate to present any additional affidavits. The sole purpose of the rebuttal allowed the Candidate was to present a **rebuttal witness**.
8. The affidavits submitted by the Candidate on January 13, 2016 are outside the timeliness for presentation of documents under Board Rule 9. The Candidate has rested his affirmative Rule 9 case, and the only matters left for presentation are the affirmative case of the Objector in support of his Rule 9 Motion, and the presentation of any rebuttal witness by the Candidate (if properly qualified, see *Motion to Bar and Strike Testimony*).

9. Nothing in the rules of this Board allows for the presentation of these affidavits in any form, whether as independent documentary evidence, or as evidence in support of a rebuttal expert opinion.

WHEREFORE the Objector respectfully requests that the Motion to Strike Affidavits be granted .

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. P. Nally", is written over a horizontal line.

James P. Nally

James P. Nally, P.C.
8 S. Michigan Avenue, Suite 3500
Chicago, Illinois 60603
Phone: (312) 422 5560
Fax: (312) 346 7999
jpnlaw@att.net

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing Document was served upon John Fogarty Attorney for Candidate, Hearing Officer Philip Krasny, and the Electoral Board (through legal counsel Ken Menzel) by email before the hour of 8 PM on Jan 14, 2016.



James P. Nally, P.C.

4

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE
OFFICE OF REPRESENTATIVE IN THE GENERAL ASSEMBLY FOR THE
63rd REPRESENTATIVE DISTRICT OF THE STATE OF ILLINOIS

Ronald Eck,)	
)	
Petitioner-Objector,)	
)	
v.	)	ORIGINAL ON FILE AT
	)	STATE BD OF ELECTIONS
	)	ORIGINAL TIME STAMPED
Steven Reick,	)	AT <u>2015, Dec. 7, 3:08 pm</u>
	)	<i>HK</i>
Respondent-Candidate.)	

OBJECTOR'S PETITION

INTRODUCTION

Ronald Eck, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 11617 Country Club Rd., Woodstock, Illinois, Zip Code 60098, in the 63rd Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of Representative in the General Assembly for the 63rd Representative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Steven Reick as a candidate for the office of Representative in the General Assembly for the 63rd Representative District of the State of Illinois ("Office") to be voted for at the Primary Election on March 15, 2016 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:

4. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 500 duly qualified, registered and legal voters of the 63rd Representative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 500 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.

5. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 63rd Representative District of the State of Illinois, and such persons are not registered voters in the 63rd Representative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.

8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

9. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet Indicated," in violation of the Illinois Election Code.

10. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator, and every signature on such sheets is invalid, as is set forth in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, "Circulator Did Not Sign Petition Sheet."

11. The Nomination Papers contain at least one sheet where the Candidate executed a false oath in that he signed the circulator's affidavit inaccurately attesting that the signatures on that sheet were "genuine." The signature on Sheet 19, Line 11 purports to be that of Jack Franks, whose address is listed as "Franks, Gerkin & McKenna. At the time of executing the circulator's affidavit knew, or should have known, that the signature appearing on Sheet 19, Line 11 is not that of Jack Franks (the incumbent State Representative against whom the Candidate seeks to run). As a result, the circulator's affidavit on Sheet 19 is false and invalid. Consequently, each and every sheet circulated by the Candidate is invalid in its entirety.

12. The Nomination Papers contain less than 500 validly collected signatures of qualified and duly registered legal voters of the 63rd Representative District of the State of Illinois, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

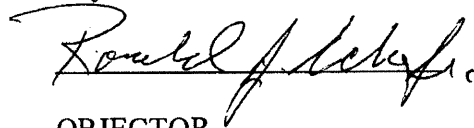
13. Sheet 33 is invalid in its entirety because the signer whose name appears (James Kloczek) on Line 6 of Sheet 33 is also the notary public who notarized the petition sheet. Because the notary public is a party to the transaction (i.e. a signer of the petition), he may not legally notarize that sheet. As a result, Sheet 33 is not properly notarized and is invalid in its entirety.

14. The Nomination Papers include petition signatures that are invalid because the petition signers had previously signed a petition for Democratic candidate Jack Franks, thereby rendered their signatures on the Candidate's petitions invalid. Such signatures are:

Reick Sheet/Line	Notary Date	Franks Sheet/Line	Notary Date
Sheet 27: Line 14	11/29/15	Sheet 10: Line 5	11/5/15
Sheet 18: Line 2	11/29/15	Sheet 16: Line 4	10/7/15
Sheet 18: Line 2	11/29/15	Sheet 45: Line 2	9/22/15
Sheet 4: Line 10	11/29/15	Sheet 36: Line 9	9/28/15
Sheet 42: Line 1	11/29/15	Sheet 59: Line 18	9/22/15
Sheet 46: Line 10	11/29/15	Sheet 66: Line 11	10/2/15
Sheet 23: Line 8	11/29/15	Sheet 66: Line 20	10/2/15
Sheet 20: Line 2	11/29/15	Sheet 77: Line 8	9/22/15

15. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 63rd Representative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Steven Reick shall not appear and not be printed on the ballot for nomination to the office of Representative in the General Assembly of the 63rd Representative District of the State of Illinois, to be voted for at the Primary Election to be held March 15, 2016.

A handwritten signature in cursive script, appearing to read "Ronald Eck", written over a horizontal line.

OBJECTOR

Ronald Eck

11617 Country Club Rd.,

Woodstock, Illinois 60098

VERIFICATION

STATE OF ILLINOIS

COUNTY OF COOK

)
) SS.
)

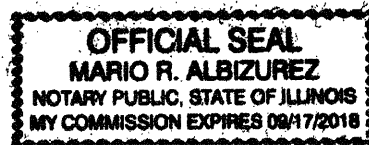
I, Ronald Eck, being first duly sworn upon oath, depose and state that I have read the above and foregoing OBJECTOR'S PETITION, and that the matters and facts contained therein are true and correct to the best of my knowledge and belief.

Ronald J. Eck

Subscribed and sworn to before me

by Ronald Eck
this 5th day of December, 2015.

[Signature]
Notary Public



BEFORE THE STATE OFFICERS ELECTORAL BOARD

David Stieper)	
	Objector)	
)	
vs.		)	No. 15 SOEB GP 514
)	
Casey Urlacher)	
	Candidate)	

Objector's Exceptions to Hearing Examiner's Proposal for Decision

Now comes the Objector, David Stieper, by and through his attorney, Richard K. Means, and pursuant to this Board's Rule 5, the Objector submits his exceptions to the Hearing Examiner's Proposal for Decision. In sum, the Objector complains that the Hearing Examiner erred in excluding and refusing to consider admissible evidence offered by the Objector. Further, the Objector complains that the Hearing Examiner erred in admitting and considering inadmissible evidence offered by the Candidate. The result of these erroneous evidentiary rulings led to the erroneous conclusion that the Candidate qualified for ballot access. Had the Hearing Examiner ruled correctly regarding admissibility of evidence, the Candidate would not qualify for ballot access. Thus, the Objector urges this Board to reverse and find that the Candidate did not successfully rebut the findings of the registration records examination thus finding the nomination papers insufficient for ballot access. In the alternative, the Objector urges the Board to reverse and remand to another and different hearing examiner with directions respecting the admissibility of the Objector's proffered evidence, his Rule 9 Motion Appendix C. and the Candidate's proffered evidence, his "Rule 9 Motion Supplemental Documents" and his Rule 9 Motion Affidavit evidence.

The Facts

The evidentiary hearing in this matter occurred on December 28, 2015. Stenographic notes were taken by certified court reporters but, notwithstanding this Board's Rule 5, the Board has not ordered transcription of the *verbatim* record. Thus the transcript was not available to the Hearing Examiner to assist in her written report and proposed decision. As the Objector's recollection of the evidentiary hearing rulings differs markedly from the recollections of the Hearing Examiner, the Objector has purchased the *verbatim* transcript of the morning evidentiary argument and rulings so that this Board can base its decision on an accurate recounting of the contested portions of the December 28, 2015 evidentiary hearing.

Summary of the Case's Chronology

The registration records examination in this case was performed on December 18, 2015 at the Board's Springfield offices, with 12 watchers from each side. That same day, the Board served the parties, by email, with 312 pages of detail of the clerks' rulings. This issuance of the detailed report that day determined that any responses were due December 23¹.

On December 23, at 3:54 pm, by email, the Candidate filed his Rule 9 Motion and the bulk of his specified disputes and proofs with the records examination clerks' rulings. At 4:42 pm, by email, he filed additional disputes and proofs with the records examination clerks' rulings.

On December 23, at 4:47 pm, by email, the Objector filed his Rule 9 Motion detailing **all** of his specified disputes with the records examination clerks' rulings and **some** of his proofs. The Objector's covering email informed the Hearing Examiner, Candidate and General Counsel "I'm having technical problems with the proofs in Appendix C but they will be (in) in a few minutes."² The Objector filed, by email, his Rule 9 Motion Appendix C supporting proofs at 6:17 pm.³

¹ Although the Electoral Board's Rules do not specify, the practice is that matters due a particular day are due at 5:00 pm, the conventional close of business.

² The technical problem was condensing a 238 page, 31 mb portable document format (pdf) file to a size that all parties' email equipment could receive it. See Appendix A. (attached hereto and incorporated herein by reference) for more details.

³ Thereafter, Objector filed corrected Rule 9 Appendices A, B and D. See Appendix A. (attached hereto and incorporated herein by reference) for more details.

On December 24, the Candidate moved to strike the Objector's late-filed proofs, and the Objector answered asking that the lateness be excused for good cause shown.⁴

On December 28, the previously set Rule 9 evidentiary hearing commenced. First, the Hearing Examiner ruled to deny the Candidate's Motion to Strike and Dismiss the Objector's objection to petition entries for which the address was illegible and therefore the entry's *bona fides* could not be determined. Then the Hearing Examiner took up the Candidate's Motion to Strike and Dismiss Objector's late-filed exhibits. Respecting the late-filed corrected versions of Appendices A., B., and D. (filed initially before 5:00 pm with corrections coming at 6:50 pm, 6:58 pm, and 8:34 pm), the Hearing Examiner ruled that the late-filed corrected versions came impermissibly after the filing deadline notwithstanding the technical, non-substantive computer problems which caused the lateness. Transcript, 12/28/2015 (morning) evidentiary hearing (*hereinafter* "Tr.") p. 18. The Objector made an offer of proof and the proffered exhibits were lodged in the record. Tr. pp. 28-29.

Contrary to the Hearing Examiner's recollection in her Report and Recommended Decision (pp. 3-4), she granted the Candidate's Motion To Strike and Dismiss Objector's Appendix C., the 238 page exhibit of certified voter registration records (containing, *inter alia*, the facsimile of the original registration signature), ***not on the grounds of lateness, but on the grounds of admissibility*** - that it was not the proper role of the Board or its hearing officer to compare the petition signature. Specifically the Hearing Examiner ruled:

And I want to start with the issue of Appendix C. Appendix C goes to the genuineness of the signature. Notwithstanding the fact that something was submitted after the fact, regardless of the time, whether it was submitted before or after 5 p.m., I wouldn't have considered the issues set forth in Appendix C; and the reason for that is that there is no additional evidence.

You're submitting to me exactly what the records exam evidence showed and then you're asking me to do essentially another records exam which is something that I don't believe the rules contemplate. I don't believe that the procedures and the practices of the Boards contemplate that I am just going to look at a record and determine whether I think the Board of Election -- the various Boards made the correct decision without any additional evidence. You know, if there were affidavits, it would be one thing. If there was a handwriting expert, it would be something. But just to look at the registration records that were already reviewed in a records exam I would decline to do that anyway.

⁴ See Appendix A. (attached hereto and incorporated herein by reference) for more details.

So, with respect to C., you're not losing anything with respect to this timing issue because I wouldn't have considered it anyway.

Nevertheless, I believe that -- So I wanted to address Appendix C. because that seems to be the bulk of your motion anyway. Tr. 17-18.

The Objector argued that the evidence was proper and that the Hearing Examiner's re-examination or comparison of the petition signature with the voter registration signature of the purported voter was proper and indeed required by Illinois law, by the Board's Rules and by the customs and practices of Illinois ballot access litigation. Tr. pp. 19-22. The Hearing Examiner was not persuaded (Tr. pp22-23) and the Objector made an offer of proof and lodged Objector's Exhibit Appendix C. in the record. Tr. pp. 23-25.

The Objector then moved to strike and dismiss the Candidate's proffered exhibit which sought to rehabilitate registration records examination rulings that petition signers were not registered at the address shown and/or were out of district. The Objector filed a written motion and orally argued that the documents the Candidate sought to use in this regard were not certified and official voter registration records and that they originated from a different and less detailed database than that used in the registration records examination and therefore do not directly contradict the clerk's rulings because, for example, they do not show when the voter registered at his current address preventing a determination of whether the voter was registered at that address when he or she signed the petition. Tr. pp.30-37. The Hearing Examiner took this issue under advisement (Tr. p. 37) and ruled to admit the evidence after the lunch break.

The Candidate then began to present his affidavit evidence intended to contradict and contravene the records examination clerks' rulings on signature genuineness. The Objector again objected to the evidence proffered on the grounds that it did not directly contradict the Clerks' rulings that the signatures on the petition did not reasonably match the voter registration records. What the Candidate presented, Objector argued, was intended to show that the writing on the affidavits reasonably matched the writing on the petition which, of course, proved nothing about the registration records examination clerks' rulings. Tr. pp. 37-48. The Hearing Examiner took this issue under advisement (Tr. p. 48) and ruled to admit the evidence after the lunch break.

The Hearing Examiner Erred in Excluding Objector's Proffered Certified Voter Registration Records as Inadmissible for the Purpose of Proving Erroneous Records Examination Signature Rulings

Pursuant to this Board's Rule 10 respecting evidence:

Evidence submitted by either party will be heard by the Board or the designated hearing examiner, including, but not limited to, documentary evidence, depositions, affidavits, and oral testimony. Documentary evidence shall be presented at a hearing, however service of such documentary evidence may be made by facsimile or e-mail. Any affidavits submitted must be original, and **any voter registration records must be certified by the election authority that issued them.** (*emphasis supplied*).

This Board's Rule 9 respecting registration records examinations and, particularly, the proper way to rebut records examination rulings is:

Section 1A-25 prohibits viewers from printing any records viewed at the records examination and there is no provision requiring the Board to print any such records for the benefit of any party. Therefore, at no time will the Board entertain any requests for printouts of records that were examined during the records examination conducted by the Board except as otherwise ordered by the Board. Lists of registered voters are available for purchase by political committees registered with the Board, pursuant to Article 4, 5 and 6 of the Election Code. Note: Such records do not contain the signatures of the voters. In addition, records of individual voters can be obtained through the office of the election authority in whose jurisdiction the voter is registered. Check with the appropriate election authority as to obtaining such records, and the content of same.

In his Rule 9 Motion, the Objector identified the names, addresses, petition sheet, and line number and presented the reason why the registration records examination ruling, holding that the petition signature objected to reasonably matched the voter registration signature, was erroneous. In his Appendix C. to the Objector's Rule 9 Motion, he offered 119 certified voter registration certificates from the County Clerk of Lake County containing, *inter alia*, the facsimile of the voter's registration signature, the date of the voter's original Lake County registration, and the date of the registration at the voter's current registered address. Thus the Objector presented to the Hearing Examiner the same official record that the records examination clerks had before them when the clerks made their ruling and the Objector's watcher voiced his or her exception.

The Candidate objected to the admissibility of Appendix C. to the Objector's Rule 9 Motion, claiming that it was improper for the Hearing Examiner to "redo" the records examination without the submission of further additional evidence, such as an affidavit from the voter involved, testimony from

the voter, testimony from an expert witness, *etc.* The Candidate claimed that the Hearing Examiner should not review the records examination clerk's decision without evidence above and beyond that which was available to the records examination clerk. The Hearing Examiner agreed with the Candidate's objection, ruled the proffered evidence inadmissible, excluded Appendix C. to the Objector's Rule 9 Motion and refused to consider the evidence.

The Objector made an offer of proof that the reasonable review of the substance of Appendix C. to the Objector's Rule 9 Motion would show that the 119 signature rulings of the records examination were erroneous, and said evidence is included in the record pursuant to that offer of proof.

The Hearing Examiner's ruling is contrary to long-established Illinois law, contrary to the patterns and practices of Illinois Electoral Boards, and contrary to this Board's rules. The practice of referring objections to a process of comparing the objection to the official voter registration records (here, the state-wide voter registration database) with a neutral third-party election board employee with the Objector and Candidate representatives watching is nearly universal. The "binder check" or registration records examination is nowhere authorized by statute; indeed the Election Code plainly assigns the Electoral Board with the duty of ruling on the *bona fides* of the nomination papers and thus the *bona fides* of each individual supporting signature. 10 ILCS 5/10-10. See *Wiseman v. Elward*, 5 Ill. App.3d 249 (1st Dist., 1972).

The fact that a "binder check" (registration records examination) is not authorized by the Election Code is not to suggest that the practice is in any way objectionable. Indeed it is most useful to narrow the issues and to allow the parties to observe the official records (and particularly, the registration signature). In the experience of most election lawyers, the overwhelming number of disputes over the validity of petition entries are agreed by the parties once they have observed the "binder check" comparison. Thus the process permits the parties to informally narrow the attention of the fact-finding process to petition entries which are actually disputed. Records examination rulings which are not disputed are presumed valid on a waiver theory, and those which are disputed are subject to the presentation of proofs to the finder of fact within three business days. See Rule 9.

The Candidate here would have this Board believe that registration records examination clerks' rulings are somehow final and not subject to review without an extraordinary presentation of evidence. That is not the law since the Election Code prescribes that the Electoral Board is the finder of fact and is

in no way authorized to delegate its duties. Indeed, this Board's Rules make it clear that the records clerks' rulings are merely "evidence." Rule 9. The use of the term "evidence" makes it clear that these rulings are not the decisions of a decision-maker but matters subject to review and decision by a person or body authorized to make such decisions. Board Rule 9 specifically provides:

The Board's staff shall, based upon their examination of the relevant registration records, make and announce a finding as to whether certain objections in the objector's petition are sustained or overruled. Such computerized voter registration records of the State Board of Elections and the **staff findings as to whether the objections are sustained or overruled may be considered as evidence with respect to the objections described above.** (*emphasis supplied*)

This Board's Rules describe the process well in the introductory paragraph of Appendix A. to (and incorporated by reference in) this Board's Rules. Indeed, that paragraph specifies that the registration records examination rules can be disputed at a hearing by **either evidence or argument**:

Listed below are the most common grounds for objections to petitions and the basis on which the Board will render decisions on objections **unless evidence or argument presented at hearing persuade the Board that circumstances require a differing decision.** (*emphasis supplied*)

Here, the Objector offered evidence and sought to make argument, and the certified registration record evidence offered was held inadmissible and the argument refused a hearing, plainly contrary to the Board's rules.

The Hearing Examiner excluded the Objector's Appendix C. evidence and refused to consider argument that the records examination clerks erred in specific instances detailed in the Objector's Rule 9 Motion on the grounds that it was not her role to examine and compare petition signatures with registration record signatures. That ruling is directly contrary the Board's Rules in general and Board Rules Appendix A., II. C., which provides:

C. Circulator's Signature Not Genuine

If the circulator is a registered voter in Illinois, his or her original signature on his or her registration card shall be examined by the hearing examiner. NOTE: It is not a requirement that a petition circulator be a registered voter. If, in the opinion of the hearing examiner the signature is not genuine, the objection should be sustained. The validity of a circulator's signature may be proved by any competent evidence. Collateral evidence of the validity of the signature of the circulator is admissible, such as testimony of a person purporting to observe one person signing the name of another circulator. ... (*emphasis supplied*)

Notwithstanding her ruling refusing to examine and rule upon handwriting when asked to do so by the Objector, the Hearing Examiner examined handwriting on the petitions dozens of times respecting registration evidence offered by the Candidate, rendering rulings both for and against the Candidate. Indeed, the Hearing Examiner demonstrated extraordinary skill, acuity and fairness in her handwriting rulings and those rulings were not disputed by either party.

The Hearing Examiner Erred in Excluding Objector's Proffered Certified Voter Registration Records for the Purpose of Proving Erroneous Records Examination Signature Rulings As Filed Untimely

As is shown above, at the evidentiary hearing, the Hearing Examiner orally ruled at the December 28 evidentiary hearing:

And I want to start with the issue of Appendix C. Appendix C goes to the genuineness of the signature. Notwithstanding the fact that something was submitted after the fact, regardless of the time, whether it was submitted before or after 5 p.m., I wouldn't have considered the issues set forth in Appendix C; and the reason for that is that there is no additional evidence.

You're submitting to me exactly what the records exam evidence showed and then you're asking me to do essentially another records exam which is something that I don't believe the rules contemplate. I don't believe that the procedures and the practices of the Boards contemplate that I am just going to look at a record and determine whether I think the Board of Election -- the various Boards made the correct decision without any additional evidence. You know, if there were affidavits, it would be one thing. If there was a handwriting expert, it would be something. But just to look at the registration records that were already reviewed in a records exam I would decline to do that anyway.

So, with respect to C., you're not losing anything with respect to this timing issue because I wouldn't have considered it anyway.

Nevertheless, I believe that -- So I wanted to address Appendix C. because that seems to be the bulk of your motion anyway. Tr. 17-18.

In her written Report and Recommended Decision, **which was plainly prepared without the benefit of the *verbatim* transcript**, the Hearing Examiner ruled that the principal reason why Objector's Appendix C. was not admitted was that it had been filed 1 hour and 17 minutes late. The Hearing Examiner wrote:

Objector argued that the Rule 9 motion had been submitted timely albeit without the requisite evidence and because the Candidate was already on notice as to what issues were going to be presented, the delay in submitting the evidence did not prejudice the Candidate. Candidate argued that there were other affidavits obtained by the Candidate that were obtained beyond the deadline but were not submitted because the Board's Rules of Procedure clearly set forth a definitive 5:00 p.m. deadline. In the opinion of this hearing officer, computer issues, while frustrating, do not constitute good cause shown to extend the specific deadlines set forth in Board's rules of procedure. Accordingly, Candidate's Motion to Strike, Dismiss and Not Consider Late Filings was granted as to the late submissions.

However, it is important to note the nature and the quantity of the purported evidence that was submitted after the deadline. Had the Motion been denied and the Objector been permitted to have all evidence considered, the evidence would have consisted of registration records for 4 signers deemed to be registered, 119 registration records whose "writing on the petition...bears no objective similarity to the voter's registration signature" (Objector's Rule 9 motion) and 2 registration records where the allegation was that the address was incomplete and when the records were located, they were actually out of the district. Had all of the late submitted evidence under Exhibits A, B and D been considered, it conceivably could have resulted in a net loss to the Candidate of 6 signatures (or put another way, a net gain to the Objector of 6 sustained objections). Therefore, it is important to note that the sum and substance of purported evidence under Objector's Exhibit C submission regarding the genuineness of signatures was simply the signature clips of the signers. When asked if the Objector had further evidence in the way of affidavits, testimony of signers or an expert witness, the Objector indicated that the only evidence to be submitted were the signature clips. In the opinion of this hearing officer, the signature clips of signers, without additional evidence, does not constitute sufficient evidence to change the findings from the records examination. Rather, the submission of signature clips is simply an opportunity to have a second records examination which unduly delays the hearing and places the hearing officer in the position of second guessing the rulings made by the employees who conducted the examination. Accordingly, even if all of the late filed exhibits under Appendix C were accepted as timely, they would have presented an insufficient basis to change the original findings from the records examination.

Both the Candidate and Objector filed written motions on the subject with the Candidate seeking all late-filed exhibits to be excluded on the grounds that accepting the 1 hour 17 minutes late exhibits would give the Objector unfair advantage. The Objector argued out that the lateness was caused by malfunctioning computer equipment trying to get a very large computer file into an email format all parties could accept, that the Objector received no unfair advantage since his claims were on file in full detail before the 5:00 pm deadline and those slightly late-filed proofs showed on their face that they had been acquired prior to the deadline date. Objector argued that the Candidate had notice that there was going to be a brief delay in the filing of supportive proofs and that the Candidate suffered no harm caused by the delay. Objector asked that the lateness be excused for good cause shown. See the parties' motions on the timing issue in Appendix A. attached. See also the parties' argument on the timing issue Tr. pp. 2-18.

This Board deals with lateness of computer-filed campaign finance documents at virtually every one of its meetings. The vagaries of malfunctioning equipment and less than fully experienced computer operators accidentally and frequently makes documents days late. This Board has a general rule that each filer gets one excused deficiency and only the negligent and chronically-late receive punishment. Here, we have an explained and predicted 1 hour 17 minute delay with no advantage gained and no harm suffered on account of the delay. Under these circumstances, the Board should excuse the delay for good cause shown.

The Hearing Examiner Erred in Admitting Candidate's Rule 9 Supplemental Documents for the Purpose of Rehabilitating Not Registered at Address Shown and Out of District Rulings

After the Hearing Examiner ruled on the Candidate's motion to exclude the Objector's Appendix C., the Objector moved to exclude purported evidence offered by the Candidate in an appendix captioned, in handwriting, "Voter Registration Cards; Objections as to 'not registered' and 'outside district.'" The Objector pointed out that, while some of these documents look like official election records, they were not authentic and certified voter registration records, and they did not directly rebut the December 18, 2015 registration records examination rulings because the proffered documents contained less and different information from the database used by the registration records clerks in making the rulings on December 18, 2015. Specifically, the Objector pointed out that these documents, while plainly uncertified, showed an "issuance date" of December 2015, and thus did not show whether the voter was registered at the address shown at the time he or she signed the Candidate's petition, one of the standards ruled upon by the registration records clerks. To explain:

The registration records examination with which the Candidate quarrels was performed using the State Board's continuously updated state-wide voter registration database mandated by the Help America Vote Act. These are official governmental records maintained in the regular course of business and continuously updated for official purposes. These records and the conclusions based on them are therefore rebuttably presumed to be accurate and competent to prove the truth of the matter asserted.

Using that database, the registration records clerks made rulings respecting whether the persons who signed the petitions were registered at the address shown **at the time they signed**. For example:

- a. At sheet 138, line 7, a registration objection was overruled because Greg Nelson registered to vote on November 13, 2015, five days prior to that sheet's notarization;
- b. At sheet 259, line 3, a registration objection was overruled because Antonietta Simonian registered to vote on October 18, 2015, some 26 days prior to that sheet's notarization; and
- c. At sheet 294, line 2, a registration objection was overruled because Mark Bowen registered to vote on November 17, 2015, the same day as that sheet's notarization.

The Candidate also seeks to attack the registration records clerks' rulings with uncertified "voter registration cards" dated December 2015. While these cards appear to be authentic, the Candidate admitted, on the record, to manufacturing them by manipulating the Lake County Clerk's Web site and then printing them out. Specifically, this proffered evidence does not show the date that the voter re-registered at the address shown which may be after the voter signed the petition. Thus this proffered "evidence" provides no ability to determine when the voter was qualified to validly sign the petition when he or she did.

This Board is well-aware that there is always "churn" in registered voters during a petition circulation period, with new voters registering and old voters moving away, dying, being convicted of disqualifying felonies, *etc.* Thus it is important to determine the registration date at a particular address in order to determine the validity of a petition entry at the time of the signing.

Thus, this evidence offered to contravene the records examiners' rulings is not competent and probative and should be stricken for that reason alone.

Again, the Candidate, by counsel, admitted on the record that this "voter card" evidence was not certified or even official records, but the evidence was manufactured by counsel and his staff from the Lake County Clerk's Web site. Notwithstanding the Candidate's admissions, the Hearing Examiner erroneously admitted the evidence and held as rehabilitated six additional signatures based upon that evidence.

This Board's Rule 10 respecting evidence is very clear:

Evidence submitted by either party will be heard by the Board or the designated hearing examiner, including, but not limited to, documentary evidence, depositions, affidavits, and oral testimony. Documentary evidence shall be presented at a hearing, however service of such documentary evidence may be made by facsimile or e-mail. Any affidavits submitted must be original, and **any voter registration records must be certified by the election authority that issued them.** (*emphasis supplied*).

As this evidence plainly purports to be "Voters Registration Cards" and they are plainly not certified public records, and for the additional reason that they are a mismatch with the state-wide voter database on which the registration records examination rulings were based, they are not probative - they do not properly rebut - and must be held inadmissible. The six additional signature rulings⁵ benefitting the Candidate must be reversed.

The Hearing Examiner Erred in Admitting Candidate's Rule 9 Motion Affidavits for the Purpose of Rehabilitating Signature Genuineness Rulings

After the Hearing Examiner ruled on the Objector's motion to strike and dismiss the Candidate's Rule 9 Motion Supplemental Documents, his evidence on registration at address shown and out-of-district rulings, the Candidate began his proofs to contradict and contravene signature rulings adverse to him by introducing 77 affidavits and associated documents. The Objector orally moved to exclude the purported evidence offered by the Candidate on the grounds that these documents do not prove what they purport to prove; since the documents do not disprove the rulings of the registration records clerks, they are irrelevant and immaterial to this proceeding. To explain:

The issue ruled upon by the registration records clerks was, in each case, whether the petition signature reasonably matched the voter registration signature on the official registration records. See Board Rule Appendix I. A.; compare Board Rule Appendix I. E. **"it is impossible to determine genuineness of the signature without a comparison to the signature on the voter registration record."** (*emphasis supplied*)

⁵ Note that, after the evidentiary hearing and the Hearing Examiner's report, the parties reviewed the numbers and agreed that if the Hearing Examiner's rulings were correct, the gain for the Candidate should be five and not six and the ending total would be that the Candidate was 48 and not 49 over his minimum.

Thus, what the affidavit and associated evidence offered by the Candidate prove (when the writing on the petition matches the writing on the affidavit) is that the same person who signed the Candidate's petition, signed the affidavit. That may be an interesting and expected fact but in no way proves that the writing on the petition was made by a registered voter. Thus, the Candidate's affidavit evidence may prove something, but it does not disprove the ruling made by the registration records clerk.

The Candidate protests that the above argument ignores the fact that the affidavit identifies the affiant by name and address, and is sworn to, and that the notary is charged with the responsibility of determining the identity of the affiant before him or her. See 5 ILCS 312/6-102. Does the evidence offered by the Candidate allege, under anyone's oath, that the notary knew the affiant personally or inspected the affiant's identification papers? Even without an oath respecting the ascertainment of the affiant's identity, is there any representation anywhere that the Candidate's notary ascertained the identity of the affiant before him or her? The Candidate protests that the very fact that there was a notarization constitutes a warranty that the notary confirmed the affiant's identity. No such representations are anywhere in evidence.

The Candidate argues that a notary is a public officer and he is rebuttably presumed to have discharged his official duty of ascertaining the identity of the affiant. Indeed, does that presumption attach when the notary has a personal interest in the outcome of the use of the affidavit? An examination of the evidence offered shows that, in more than a few cases, the notary had an interest in the success of the affidavit.

Sheet	Line	Interest of the Notary on the Affidavit
1	2	The notary on the affidavit was the circulator of the petition sheet in question.
2	3	The notary on the affidavit was the circulator of the petition sheet in question.
2	6	The notary on the affidavit was the circulator of the petition sheet in question.

2	7	The notary on the affidavit was the circulator of the petition sheet in question.
5	6	The notary on the affidavit was the circulator of the petition sheet in question.
68	4	The notary on the affidavit was the Candidate's paid campaign manager.
76	7	The notary on the affidavit was the Candidate's paid campaign manager.
122	6	The notary on the affidavit was the notary of the petition sheet in question.
328	7	The notary on the affidavit was the Candidate's paid campaign manager.
334	1	The notary on the affidavit was the Candidate's paid campaign manager.

This Board should hold that the affidavit evidence offered by the Candidate was not probative and competent to prove that the registration records examination rulings respecting signature genuineness were in error since the Candidate did not prove that the affidavit evidence contained writings which reasonably matched the writing of a registered voter.

The Remedies the Board Should Apply

Wherefore, because of the foregoing, this Board should order that the evidence offered by the Candidate was inadmissible to contradict and contravene the registration records examination rulings because it did not prove that the rulings were in error. As such, the findings of the registration records examination would stand as uncontradicted and the Candidate would fail to have presented at least 1000 signatures of registered voters of his party and of his district. The Board then need not consider the Objector's offered evidence.

In the alternative, this Board should find that the evidence submitted by the Objector was admissible and reasonably timely and the Board should decline to accept the Hearing Examiner's Recommended Decision reversing and remanding to another and different hearing examiner with

directions respecting the admissibility of the Objector's proffered evidence, his Rule 9 Motion Appendix C. and the Candidate's proffered evidence, his "Rule 9 Motion Supplemental Documents" and his Rule 9 Motion Affidavit evidence.

Respectfully submitted,

David Stieper

A handwritten signature in black ink, appearing to read "Richard K. Means", written in a cursive style.

by and through his attorney
Richard K. Means

Richard K. Means
ARDC Attorney #01874098
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January 15, 2016

Appendix A.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

DAVID STIEPER,)	
)	
Objector,)	
)	
v.	)	No. 15 SOEB GP 514
)	
CASEY URLACHER,)	
)	
Candidate.)	

**CANDIDATE'S MOTION TO STRIKE, DISMISS,
AND NOT CONSIDER LATE FILINGS**

NOW COMES the Candidate, CASEY URLACHER, by and through his attorneys, ODELSON & STERK, LTD., and respectfully asks this Hearing Officer and Board to comply with the Adopted Rules by Striking and not considering any filings by the Objector past the 5:00 p.m. deadline on Wednesday, December 23, 2015. In support thereof, the Candidate states as follows:

1. First and foremost, as we are sure the Objector's attorney will agree, the courts of our State, and the United States Supreme Court (see *Norman v. Reed*, 502 U.S. 279, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992)) always are on the side of ballot access whenever possible.
2. Rule 9 of the Adopted Rules provides, "Such evidence offered to refute the staff finding must be submitted to the Board or the hearing examiner no later than 5:00 p.m. on the third business day following the date of the transmittal of the report described in the immediately preceding paragraph unless extended by the Board for good cause shown."
3. No request for an extension of time was made – and none was granted.

4. The Candidate worked very hard and expeditiously in obtaining affidavits and voter registration verifications to have everything filed prior to the established time of 5:00 p.m. on December 23, 2015.

5. Many, many more affidavits could have been obtained – and, in fact, some were obtained, but not filed because the 5:00 p.m. filing deadline passed.

6. Whether the problem on the Objector's side was lateness of receipt of documents (which Candidate believes is the case), or computer problems, the fact is that the only timely Rule 9 document filed at 4:47 p.m. contained:

- NOTHING under Appendix A;
- A map under A-1-17;
- NOTHING under Appendix B;
- One certification under B-1;
- NOTHING under B-2, B-3, B-4;
- NO Appendix C – at all; and
- NOTHING under Appendix D, D-1 and D-2!

7. It is just not fair, equitable, and against the Adopted Rules to consider anything other than the original filing outlined above.

8. Further, in the initial filing, there are no affidavits as required under the Board's Rule 9 specifications:

“Evidence in the form of an affidavit must be sworn to, signed, and notarized before a notary public or other officer authorized to administer oaths in the State of Illinois.”

There is only a “listing” of names that counsel for the Objector “believes” were incorrectly ruled upon by the Board's agents. No evidence was submitted for the rulings

attacked by the Objector, except the few records found as to address verification under A-1 through A-17.

9. The evidence that the Board and hearing officer will admit is specified in Rule 10. **Evidence.** The evidence is to be, “documentary evidence, depositions, affidavits, and oral testimony.” Argument of counsel that the records examination clerk was incorrect is not evidence. The hearing before the Board or hearing officer is not a “redo” of the Board’s agents’ findings, as the Objector is now asking. It is a hearing where evidence is to be presented to convince the hearing officer and Board that the records examiner was incorrect.

10. The continuous submissions by the Objector of documents at 6:17 p.m., 6:50 p.m., 6:58 p.m., and 8:34 p.m. are untimely and will not be considered by the Candidate in preparation of the December 28, 2015, 9:00 a.m. hearing.


11. Lastly, counsel for the Objector is a seasoned election law attorney who knows that late filings, as those submitted, are not accepted by a court, a board, or a hearing officer.

12. The Candidate respectfully requests the Hearing Officer and General Counsel consider ruling on this Motion prior to December 28, 2015, so the hearing can move ahead on the timely filed Rule 9 requests of the Candidate and the Objector.

WHEREFORE, The Candidate, CASEY URLACHER, respectfully requests this Motion to Strike, Dismiss, and Not Consider Late Filings be granted.

Respectfully submitted,

CASEY URLACHER, Candidate

By: 
Burton S. Odelson

Burton S. Odelson
Luke J. Keller
Lauren B. Glennon
ODELSON & STERK, LTD.
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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

DAVID STIEPER,

Objector,

v.

CASEY URLACHER,

Candidate.

No. 15 SOEB GP 514

NOTICE OF FILING AND SERVICE

TO: Barbara Goodman, Hearing Officer
barb@barbgoodmanlaw.com

Richard Means, Attorney for Objector
rmeans@richardmeans.com

Ken Menzel, General Counsel, SBOE
kmenzel@elections.il.gov

PLEASE TAKE NOTICE that on **December 24, 2015**, the undersigned filed with the State Officers Electoral Board, **CANDIDATE'S MOTION TO STRIKE, DISMISS, AND NOT CONSIDER LATE FILINGS**, a copy of which is attached hereto and herewith served upon you.

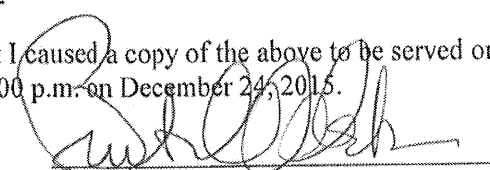
By: 

One of Candidate's Attorney

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PROOF OF SERVICE

I, Burton S. Odelson, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via electronic mail at or before 5:00 p.m. on December 24, 2015.


Burton S. Odelson

BEFORE THE STATE OFFICERS ELECTORAL BOARD

David Stieper)	
Objector)	
)	
vs.	)	No. 15 SOEB GP 514
)	
Casey Urlacher)	
Objector)	

**Objector's Response to Candidate's Motion To Strike;
Objector's Motion to Accept Slightly Late Filings
For Good Cause Shown**

Now comes the Objector, David Stieper, by and through his attorney, Richard K. Means, and pursuant to this Board's Rule 9, on December 23, 2015, the Objector submitted the names, addresses, sheet and line numbers and proofs to contradict and contravene certain registration records examination rulings overruling the Objector's objections which rulings the Objector alleges to be in error.

The Facts

The text and substance of the Objector's contentions were on file by email transmission and received by the Hearing Officer, General Counsel and the attorney for the Candidate at 4:47 p.m. on December 23. Along with the text of Objector's claims Objector filed 3 Appendices containing proofs supporting the Objector's claims. In the text of the 4:47 pm email Objector said "I'm having technical problems with the proofs in Appendix C but they will be (in) in a few minutes." This mirrors a telephone discussion Objector's counsel had an hour earlier with Candidate's counsel about the difficulty of transmitting large quantities of certified evidence by email and Candidate's counsel chuckled and said, "I understand."

The 119 proofs of Appendix C. were transmitted and received at 6:17 pm, properly identified and in a compressed package small enough to be handled by the Board's and all of the parties' email systems and equipment.

Objector's counsel then reviewed the Appendices A, B and D filed before 5:00 pm for completeness and found a few errors. In A, all material printed but was somewhat jumbled. In B, 3 certificates did not print and in D, 2 12/20 SBE Web pages printed their headers and footers but did not include the maps illustrating the points to be made. At 6:50 pm Objector's counsel emailed corrected Appendix B. At 6:58 pm Objector's counsel emailed a more orderly Appendix A without substantive changes. At 8:33 Objector's counsel emailed a corrected Appendix D. stating: "As you may have noticed, the exhibits to Appendix D. did not print out and I could not make the original versions behave. Therefore I downloaded new ones this evening and send them on now. I just want to make clear that I acquired these versions after today's deadline."

None of the Objector's claims were changed in any way after the previously set deadline. With the exception of the 2 remade maps in Appendix D, none of the evidence submitted by Objector on December 23 was acquired after the day before the deadline. All delays were caused by technical-mechanical and non-substantive - computer problems and an effort that the matters submitted be orderly and clear.

The Candidate Had Notice of the Brief Delay and Was Not Harmed

As previously outlined, the Candidate had prior notice of the brief delays in delivery of the proof and all claims were on file prior to the deadline. Thus, nothing of substance was unfairly added because one party had more time than the other.

While it was clear a few minutes before the deadline that all of the evidence could not be transmitted precisely on time, seeking an extension of time would have taken more time than working hard to get the transmissions through as quickly as possible and would have resulted in later transmissions more likely prejudicing the Candidate.

The Candidate has made no credible claims of harm from the brief delays. He claims that he could have added more substance to his case (additional rehabilitation of disputed rulings) had he had more time but the Objector's brief delays added no substance to his claims, they only supported claims already made before the deadline. The Candidate submitted additional claims after his initial filing. However the Candidate's additional claims expanded the number of records examination rulings he contests and therefore needed to be, and was, filed before the deadline. The Objector's timing delays did not attempt to create new claims.

Because the Candidate came out of the registration records examination with a substantial deficit, he has the burden of proof and the burden of going forward with evidence favorable to his cause. He is scheduled to begin those proofs on December 28. If and when his proofs successfully lift him above the statutory minimum, then the burden of going forward shifts to the Objector and the Candidate can and will shift his attention to the Objector's claims and proofs. The very brief minutes of delay in the Objector's transmission could have no significant harm to the Candidate's defense of Objector's claims after December 28.

**Good Cause Has Been Shown and Objector's Brief Delays in Transmitting
Evidence Should Be Excused.**

The foregoing presents what this Board regularly characterizes as a "computer defense" and regularly excuses when the delay is small and does not appreciably harm a party or the public interest.

Wherefore this Board should order that the brief delays are excused and that the evidence submitted later that same day may be used to support the timely-made claims.

Respectfully submitted,

David Stieper

A handwritten signature in black ink, appearing to read "Richard K. Means", written in a cursive style.

by and through his attorney
Richard K. Means

Richard K. Means
ARDC Attorney #01874098
Cook County Attorney # 27351
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December 24, 2015

BEFORE THE STATE OFFICERS ELECTORAL BOARD

David Stieper)	
)	
Objector)	
)	
vs.	)	No. 15 SOEB GP 514
)	
Casey Urlacher)	
)	
Candidate)	

Notice of Filing and Proof of Service

TO: Barbara Goodman, Hearing Officer
barb@barbgoodmanlaw.com

Kenneth Menzel, General Counsel
kmenzel@elections.il.gov

Burton S. Odelson and Lauren B. Glennon
Attorneys for Candidate
attyburt@aol.com lglennon@odelsonsterk.com

PLEASE TAKE NOTICE that Prior to 5:00 pm on January 15, 2016, the undersigned filed with the State Officers Electoral Board, Objector's Exceptions to Hearing Examiner's Proposal for Decision, a copy of which is attached hereto and herewith served upon you.

By:



Richard K. Means, Objector's Attorney

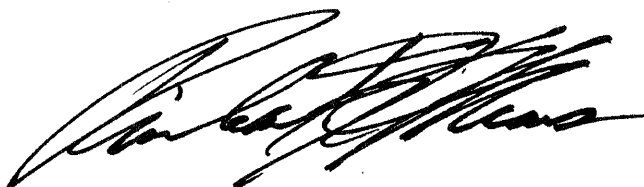
January 15, 2016

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Proof of Service

I, Richard K. Means, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via electronic mail before 5:00 p.m. on January 15, 2016.

A handwritten signature in black ink, appearing to read "Richard K. Means", with a stylized, cursive script.

Richard K. Means

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

DAVID STIEPER,)	
)	
Objector,)	
)	
v.	)	No. 15 SOEB GP 514
)	
CASEY URLACHER,)	
)	
Candidate.)	

**CANDIDATE'S RESPONSE TO OBJECTOR'S EXCEPTIONS TO
HEARING EXAMINER'S PROPOSAL FOR DECISION**

NOW COMES the Candidate, CASEY URLACHER, by and through his attorneys, ODELSON & STERK, LTD., and in response to the exceptions raised by the Objector to the Hearing Examiner's Report and Recommended Decision, states as follows:

I. INTRODUCTION

The Hearing Examiner, Barbara Goodman, is not a rookie at deciding cases and issues exactly as in this matter. She has been a hearing officer for the Chicago Board of Elections and this Electoral Board for decades. Prior to her hearing officer experience, she served as counsel to the Cook County Clerk for many, many years. That is not to say she is correct 100% of the time, but as Objector argues, she was 100% incorrect on issues he raised as well as 100% incorrect on issues the Candidate raised. The Objector also asks for a different hearing examiner if the Board remands any portion of this case. Obviously, the Rules provide when a change in hearing examiner may be requested. The first order of business, prior to any hearing on substantive matters, the change must be requested – not after the hearing when you do not like the rulings.

However, this will be a non-issue since there is nothing presented to General Counsel or the Board meriting any reversal or remand.

II. LATENESS OF FILING

The Objector does not recite the entire timeframe regarding the filing issue. As stated in the Candidate's Motion to Strike (attached to Objector's Exceptions), the bare bones Motion pursuant to Rule 9 was filed electronically at 4:47 p.m. and contained the following:

- NOTHING under Appendix A;
- A map under A-1-17;
- NOTHING under Appendix B;
- One certification under B-1;
- NOTHING under B-2, B-3, B-4;
- NO Appendix C – at all; and
- NOTHING under Appendix D, D-1 and D-2!

Further, more “filings” came in at 6:17 p.m., 6:50 p.m., 6:58 p.m., and 8:34 p.m. (*See* Candidate's Motion to Strike). Rather than reargue the Motion, suffice it to say that the Board, nor the statutes, nor any case law, have a “for good cause” standard to excuse late filings. Think of the multitude of “good cause” excuses that could be offered on a case by case basis; that would require a different ruling for every case! This is not the Rule, the law, or the practice of the election boards of this State; to provide otherwise would cause chaos and different “excuses” every time something is filed late. The standard – and Rule is simple – file before 5:00 p.m. on the designated day, or any subsequent filing is not considered as being timely. That is the only rule that works, has always worked, and will continue to work.

If the General Counsel and Board uphold the Hearing Examiner's ruling, there is nothing more to consider since the Objector only submitted 6 other objections in his Rule 9 that was timely filed, and the Candidate is 48 signatures above the minimum requirement of 1,000.

III. SUFFICIENCY OF OBJECTOR'S 119 "REDO" REQUESTS

The lateness issue aside, the Hearing Examiner refused to accept the signature clips of the 119 "redo's" requested by the Objector. This argument merits very little discussion – only an example of why the "redo" does not work. If the Hearing Examiner substituted her judgment in place of the Board's clerks on 119 requests, what is to stop future requesters from asking all decisions of the clerks be reviewed by the Hearing Examiner? As the Objector correctly states, the practice of allowing the Board's clerks to check the signature and registration objections has always been the practice, and is the only way the volume of signatures can be checked to allow for an orderly process and ballot preparation. To allow the Hearing Examiner to "redo" and reexamine the registration card with no other proofs (as the Objector correctly suggests, affidavits, testimony, experts, etc.), would be only the second step in a continuous process. To follow the Objector's suggestion, if he did not like the "redo" decision of the Hearing Examiner, he (or the aggrieved other party) could then ask the General Counsel and Board to redo the redo! Then, after the Board decides, the parties could ask the Court to redo, the redo, of the redo! Yes, ridiculous, but that is exactly what would happen if the "redo" without additional evidence is allowed. Just as the Candidate had to submit additional evidence to restore a name (affidavits and registration cards where none had been found), so must the Objector to prove the Board's clerk was in error.

Nothing more need be argued on this point except to correct a few inaccuracies in the Objector's Exceptions. At page 6, the Objector states in the 2nd paragraph:

“The Hearing Examiner’s ruling is contrary to long established Illinois law, contrary to the patterns and practices of Illinois Electoral Boards, and contrary to this Board’s rules.”

Of course, the Objector cites no case law (except *Wiseman*, which does not have anything to do with this theory), no pattern or practice of any Illinois Electoral Board, and no Rule of this Board allowing or requiring the Hearing Examiner, General Counsel, or Board to reexamine the decision of the Board’s clerks without more evidence.

Further, the Objector, in the 4th paragraph on page 6 talks about an “extraordinary” presentation of evidence. The Objector attempts to turn Rule 9 on its head by correctly stating that the registration records are evidence, but can be used, seemingly against itself, as evidence that it is not the signature of the purported voter – as found by the Board’s clerks. The only “evidence” the Objector wanted to submit was the same registration records already ruled upon by the designated Board clerks. The Objector’s reference to a Circulator’s Signature on page 7 is not germane to the argument put forth as to signatures, but the same argument advanced above likewise applies.

The registration evidence offered by the Candidate referenced at page 8 of Objector’s Exceptions will be discussed below. Suffice it to say at this juncture, the offer of registration records by the Candidate was “new” evidence – documentary evidence that was not seen or used by the binder clerks during the record examination. The records produced were “fresh” and not seen or used in the record examination.

IV. SUFFICIENCY OF CANDIDATE'S SUBMISSION OF VOTER REGISTRATION CARDS

The Objector argues at page 10 of his Exceptions that the Candidate's submission of voter's records off the Lake County Clerk's website should not have been allowed. Only 6 of the records were allowed by the Hearing Examiner. It was argued and explained at the hearing that the records were directly from the Lake County Clerk's website and found after searching for the name and address of the voter. No record was found by the Board's clerks. As the Objector's counsel well knows, the State Board's data base of registered voters is an accumulation of the County Clerks and Election Commissions records – including those of the Lake County Clerk. Thus, contrary to the Objector's misnomer of “manufacturing them by manipulating the Lake County Clerk's Website” (Objector's Exceptions, p.11), the State Board uses the same site as the Candidate did to find the registration records of the six (6) voters. It is laughable – but not surprising, that the Objector's counsel uses inflammatory language to mischaracterize the registration records. Although the registration records were not “certified” by a separate document, they were taken directly from the Lake County Clerk's website. There was no allegation or argument that the records were not true copies of those of the Lake County Clerk.

V. SUBMISSION OF NOTARIZED, UNREFUTED AFFIDAVITS AS PROOF OF THE VOTER ACTUALLY SIGNING THE PETITION

The Candidate, in 3 days, procured 77 affidavits and timely filed them with the Board and with the Objector's counsel. Each affidavit was a sworn statement by the person whose name appeared on the petition sheet, certifying that it was them that signed (or printed) their name on the Candidate's petitions. There were no allegations of registration status – or if there was, it was overruled by the Board and not contested by the Objector. The sole issue was

whether or not the person so signing the petition sheet was – or was not, the person the signature purported them to be; no more – no less.

The Objector contends that the affidavits should not be admitted. His basis is found in the first paragraph on p.13 of his Exceptions:

“That may be an interesting and expected fact but in no way proves that the writing on the petition was made by a registered voter.”

As noted at the hearing and above, the basis of the signature being not counted, as specifically objected to, was the record clerk’s finding that the signature on the petition sheet was not signed by the person it purported to be at the registered address found on the voter’s registration card. The affidavit verifies that the person signing the petition at a particular sheet and line number was, in fact, the proper person who the name purports to be – signed by that person in their own printed or hand scripted writing.

There was no need to present the voter’s registration records to have the Hearing Examiner reexamine the findings of the records clerk when comparing the signature (or printing) on the petition with the signature on the voter’s registration card. No comparison was required – or necessary. The only issue was whether the person signing (or printing) their name on the petition was, in fact, the proper person who is registered to vote at the address on the petition.

The affidavit is under oath since it is being notarized by the notary. The Objector attacks the veracity of the notary since he alleges that “no such representations are anywhere in evidence” (Exceptions, 2nd paragraph, p.13). The notary, as part of his or her official duties, must first determine the identity of the affiant. There is no proof – nothing in the record attacking the notary as not doing their job. The notaries fulfilled their duties pursuant to the Notary Act, 5 ILCS 312/6-102, *et seq.*, and there is no evidence to the contrary.

The Objector introduces new matter as a last ditch attempt to defeat the notarial acts. The allegations at pages 13 and 14 of the “Exceptions,” are not “exceptions” at all, but new arguments not raised at the hearing, and not having any place in the Hearing Examiner’s recommended decision. The Objector’s “assumptions” in his “Interest of the Notary on the Affidavit” chart are just that – his assumptions – not evidence; not the law; and not proper to be argued for the first time in the “Exceptions.”

The Objector again misstates the law on p.13, 3rd paragraph, when he attacks a number of notaries as having a “personal interest in the outcome of the use of the affidavit.” The law, as to prohibited acts of notaries, at 5 ILCS 312/6-104(b), prohibits a notary from acknowledging any instrument in which the notary’s name appears as a party to the transaction. There is nothing alleging any notary’s name appearing as a party to the transaction (the Affidavit). Further, the “Interest of the Notary on the Affidavit” chart is not evidence, not an objection raised at the hearing, and is mere speculation by the Objector.

VI. CONCLUSION

To grant the relief requested, the Board would have to find the Hearing Examiner was incorrect on virtually every recommended ruling. The Candidate submits that not only was the Hearing Examiner correct, her well-reasoned recommendations are based on:

1. The Board’s Rules as to filing a Rule 9 Motion and evidence in support of the Motion (and not relaxing the Rules to allow multiple filings for hours after the deadline has passed);
2. The Board’s Rules as to the submission of new evidence in the form of affidavits that have been notarized;

3. The Board's Rules and practice of not repeatedly reviewing the decisions of the record examiners with no new evidence (i.e., Hearing Examiner reviews record examiner; General Counsel reviews Hearing Examiner's review of record examiner; Board reviews General Counsel's review of the Hearing Examiner's review of the record examiner's decisions); and

4. Lastly, and perhaps most importantly, the highest courts of our State – and the United States Supreme Court, as well as electoral boards, have ballot access as a first priority when viewing challenges to nominating petitions. (See *Norman v. Reed*, 502 U.S. 279 (1992)).

The courts certainly do not bend established rules, allow late multiple filings, or disregard sworn affidavits in order to keep candidates from being on the ballot. This Electoral Board should do no less. The Hearing Examiner's Report and Recommended Decision should be accepted and approved as the Decision of the Electoral Board in order to preserve the integrity of the electoral process.

Respectfully submitted,

CASEY URLACHER, Candidate

By 

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

DAVID STIEPER,

Objector,

v.

CASEY URLACHER,

Candidate.

No. 15 SOEB GP 514

NOTICE OF FILING AND SERVICE

TO: Barbara Goodman, Hearing Officer
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PLEASE TAKE NOTICE that on **January 18, 2016**, the undersigned filed with the State Officers Electoral Board, **CANDIDATE'S RESPONSE TO OBJECTOR'S EXCEPTIONS TO HEARING EXAMINER'S PROPOSAL FOR DECISION**, a copy of which is attached hereto and herewith served upon you.

By: 

One of Candidate's Attorneys

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PROOF OF SERVICE

I, Burton S. Odelson, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via electronic mail at or before 5:00 p.m. on January 18, 2016.


Burton S. Odelson